

*See also
Vol. 3171*

Vol 3172

No. 16447✓

United States
Court of Appeals
for the Ninth Circuit

LEROY HEIN, STUART J. MASTERS, LAW-
RENCE COX, VINCENTE OTIZ, RAY H.
ROBINSON, J. SLOAN, ART COLEMAN,
and LEW CORNELIUS, Appellants,

VS.

FIANZA CIA, NA. S.A., a corporation and
FRACHTEN TREUHAND GNBH, a corpo-
ration, Appellees.

Transcript of Record

1
Appeal from the United States District Court
for the District of Oregon

FILED

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PAUL P. O'BRIEN, CLERK

No. 16447

United States
Court of Appeals
for the Ninth Circuit

LEROY HEIN, STUART J. MASTERS, LAW-
RENCE COX, VINCENTE OTIZ, RAY H.
ROBINSON, J. SLOAN, ART COLEMAN,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellees.

In the United States District Court
For the District of Oregon

No. Civ. 10101

Fianza Cia. Nav. S. A., a corporation, and Frachten
Treuhand GNBH., a corporation, Plaintiffs,

vs.

William Benz, John Doe 1, John Doe 2, John Doe 3
and John Doe 4, individually and as represen-
tatives of all of the members of the Sailors'
Union of the Pacific;

H. A. Robinson, James Doe 1, James Doe 2, James
Doe 3 and James Doe 4, individually and as
representatives of all of the members of the
Marine Cooks and Stewards;

Ray H. Robinson, Joe Doe 1, Joe Doe 2, Joe Doe 3
and Joe Doe 4, individually and as representa-
tives of all of the members of the Marine Engi-
neers Beneficial Association Local No. 41;

J. Sloan, Richard Doe 1, Richard Doe 2, Richard
Doe 3 and Richard Doe 4, individually and as
representatives of all of the members of the
National Order of Masters, Mates and Pilots
Local No. 90;

Carl H. Anderson, Ernest E. Baker and William
Doe 1, William Doe 2, William Doe 3 and Wil-
liam Doe 4, individually and as representatives
of all of the members of the International
Longshoremen's and Warehousemen's Union
Local No. 8;

Arthur Coleman, Frank Doe 1, Frank Doe 2, Frank
Doe 3 and Frank Doe 4, individually and as
representatives of all of the members of the
Marine Firemen's Union;

Michael E. Steele, Ed Doe 1, Ed Doe 2, Ed Doe 3 and Ed Doe 4, individually and as representatives of all of the members of the Joint Council of Teamsters No. 37;

Lew Cornelius, Sam Doe 1, Sam Doe 2, Sam Doe 3 and Sam Doe 4, individually and as representatives of all of the members of Teamsters' Local No. 162;

William Benz, Robert Doe 1, Robert Doe 2, Robert Doe 3 and Robert Doe 4, individually and as representatives of all of the members of Seafarers' International Union A. F. of L., C. I. O.;

Ralph Doe 1, Ralph Doe 2, Ralph Doe 3, and Ralph Doe 4, individually and as representatives of all of the members of National Maritime Union, Defendants.

COMPLAINT

Plaintiffs complain of defendants and for cause of suit allege as follows:

I.

Plaintiff Fianza Cia. Nav. S. A. is, and at all times herein mentioned was, a corporation duly incorporated and existing under and by virtue of the laws of the Republic of Panama.

II.

Plaintiff Frachten Treuhand GNBH is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of Germany.

III.

Defendants Sailors' Union of the Pacific, Marine Cooks and Stewards, Marine Engineers Beneficial Association Local No. 41, National Order of Mas-

ters, Mates and Pilots Local No. 90, International Longshoremen's and Warehousemen's Union Local No. 8, Marine Firemen's Union, Joint Council of Teamsters No. 37, Teamsters' Local No. 162, Seafarers' International Union A. F. of L., C. I. O., and National Maritime Union, are each unincorporated associations having rules and regulations by virtue of which members thereof act as organized bodies. Each of said organizations has a membership upwards of 1,000 men, and it would be impractical and impossible to join all of the members of any or all of said organizations as defendants in this suit.

IV.

The defendant William Benz is the Port Agent of the Sailors' Union of the Pacific at the Port of Portland, Oregon, and the defendants John Doe 1, John Doe 2, John Doe 3 and John Doe 4 are members of said Union.

V.

The defendant H. A. Robinson is the Business Agent of the Marine Cooks and Stewards at the Port of Portland, Oregon, and the defendants James Doe 1, James Doe 2, James Doe 3 and James Doe 4 are members of said Union.

VI.

The defendant Ray H. Robinson is the Business Manager of the Marine Engineers Beneficial Association Local No. 41 at the Port of Portland, Oregon, and the defendants Joe Doe 1, Joe Doe 2, Joe Doe 3 and Joe Doe 4 are members of said Union.

VII.

The defendant J. Sloan is the Port Agent of the

National Organization of Masters, Mates and Pilots Local No. 90 at Portland, Oregon, and the defendants Richard Doe 1, Richard Doe 2, Richard Doe 3 and Richard Doe 4 are members of said Union.

VIII.

The defendant Carl H. Anderson is the Secretary and the defendant Ernest E. Baker is the Business Agent at Portland, Oregon, of the International Longshoremen's and Warehousemen's Union Local No. 8, and the defendants William Doe 1, William Doe 2, William Doe 3 and William Doe 4, are members of said Union.

IX.

The defendant Arthur Coleman is the Business Agent of the Marine Firemen's Union at Portland, Oregon, and the defendants Frank Doe 1, Frank Doe 2, Frank Doe 3 and Frank Doe 4 are members of said Union.

X.

The defendant Michael E. Steele is the President of the Joint Council of Teamsters No. 37 at Portland, Oregon, and the defendants Ed Doe 1, Ed Doe 2, Ed Doe 3 and Ed Doe 4 are members of said Union.

XI.

The defendant Lew Cornelius is the Secretary-Treasurer of the Teamsters' Local No. 162 at Portland, Oregon, and the defendants Sam Doe 1, Sam Doe 2, Sam Doe 3 and Sam Doe 4 are members of said Union.

XII.

The defendants William Benz, Robert Doe 1, Rob-

ert Doe 2, Robert Doe 3 and Robert Doe 4 are each members of the Seafarers' International Union A. F. of L., C. I. O. or persons picketing on its behalf as hereinafter alleged. Seafarers' International Union A. F. of L., C. I. O. has no local officers at the Port of Portland, Oregon.

XIII.

The defendants Ralph Doe 1, Ralph Doe 2, Ralph Doe 3 and Ralph Doe 4 are each members of the National Maritime Union or persons picketing on its behalf as hereinafter alleged. National Maritime Union has no local officers at the Port of Portland, Oregon.

XIV.

Each of said individually named defendants is sued not only individually but also as representatives of all of the members of the unincorporated association of which such individual defendants are officers or members as herein alleged. Each of said individually named defendants are citizens and residents of the State of Oregon. Plaintiffs, and each of them, are citizens and inhabitants of a State or Country different from that of each of the defendants.

XV.

Plaintiffs will substitute the real and true names of the defendants Doe as soon as the same are ascertained by them, said Doe names being fictitious.

XVI.

Plaintiff Fianza Cia. Nav. S. A. is the owner and operator of the MV Capetan Yemelos. Said Capetan

Yemelos is a vessel of 14,551 dead weight tons, constructed in Japan in 1956, and which is now and ever since its launching has been duly registered at the Port of Monrovia, Liberia and flying the Liberian flag as a vessel with Liberian registry.

XVII.

On December 1, 1958, said SS Capetan Yemelos arrived at the Port of Portland, Oregon, to load a cargo of barley, pursuant to a voyage charter for said vessel made by said owner with Frachten Treuhand GNBH for the carriage of said cargo from the Port of Portland, Oregon to a Port within the Antwerp-Hamburg Range on the Continent of Europe. On its arrival at Portland, said vessel docked at the Irving Dock where it now is.

XVIII.

Said M.V. Capetan Yemelos had on its arrival at Portland aboard a full crew of officers and men who, with one exception, were of Greek nationality, the one exception being a British subject of Greek extraction. All of said officers and men had signed a form of Articles regularly prescribed by the Liberian Government, which Articles are unexpired and in effect and which govern the wages and other terms and conditions of employment of said officers and crew aboard said vessel. The wage scale specified in said Articles for each officer and other member of the crew equals or exceeds the prevailing rates paid for the same positions aboard Greek flag vessels. At no time herein mentioned was there, nor is there now, any dispute between the owners of

said vessel or her master and any of the members of the crew of said vessel concerning wages, hours or conditions of employment aboard said vessel.

XIX.

Upon its arrival at the Port of Portland early in the morning of December 17, 1958, two or more persons appeared and began to patrol at and near the gangway of said vessel, wearing placards stating:

“Runaway
Flagships
Threaten American
Merchant Marine
National Security
Protest
Against
S.S. Capetan Yemelos”

The real and true names of said pickets and of other persons who have since been and are now picketing said vessel are unknown to plaintiffs. Said persons are identified by said placards as representing the International Transport Workers Federation, with which all of the unincorporated labor organizations whose members are defendants herein are affiliated.

XX.

Said picketing was being carried out by said men acting as agents of defendants and each and all of them, and pursuant to a Resolution adopted by the International Transport Workers Federation at Hamburg, Germany, on or about November 14, 1958. The unincorporated associations of which defend-

ants are members, with the exception of the International Longshoremen's and Warehousemen's Union Local No. 8, are all affiliates of said International Transport Workers Federation; all of said unincorporated associations whose members are defendants herein, including the International Longshoremen's and Warehousemen's Union Local No. 8, have ratified and approved said action taken by the International Transport Workers Federation and their members have conspired together to act in concert for the purpose of said picketing.

XXI.

Said picketing was and is intended to induce employees of employers with whom plaintiffs have contracts for the loading and supplying of said vessel and other persons having business aboard said vessel from entering upon, working upon or carrying out their business with plaintiffs aboard said vessel, and was and is intended to prevent and discourage persons desiring to charter vessels for the carriage of cargo from dealing with plaintiffs, and particularly from chartering the M.V. Capetan Yemelos, all with the ultimate purpose of unfairly restraining trade and eliminating from competition therein vessels registered under the Liberian flag and particularly the M.V. Capetan Yemelos.

XXII.

There is no labor dispute between plaintiffs or either of them and the defendants or any of them or between the members of the crew of said M.V. Capetan Yemelos and the defendants or any of

them. None of the defendants has made any demand upon plaintiffs, the Master of said vessel or any local agent for said vessel concerning wages, hours or working conditions aboard said vessel, or the right to represent employees aboard said vessel.

XXIII (Amended)

As a result of said picketing employees of independent contractors with whom plaintiffs had contracts have been persuaded and induced not to carry on their work aboard said vessel and said vessel has been entirely idle. Plaintiffs have been prevented from continuing the operation of the vessel and from fulfilling contractual obligations which they have assumed. Plaintiff *Fianza Cia. Nav. S. A.* is suffering damage while such picketing continues in an amount in excess of \$1,500.00 per day for the loss of use of said vessel and if said picketing is continued will be prevented from employing said vessel and from carrying out the terms of said charter party and may lose other charter parties. As a result of said vessel's inability to load, demand was made upon plaintiffs by the owners of said Irving Dock that the vessel leave said Dock at 11:00 A.M. December 1, 1958, or pay damages at the rate of \$100.00 per hour thereafter in accordance with the tariff published by the owners of said Dock; but as a result of defendants' said picketing and concerted action, plaintiffs were unable to secure a pilot or tugs necessary to move the vessel from said dock. In addition to the foregoing, the plaintiffs and each of them have and are continuing to suffer irrepar-

able damage and injury to their reputations for honesty, fair dealing and the carrying out of contractual obligations. All of the acts of the defendants and each of them hereinabove described were designed to and have caused plaintiffs irreparable loss of business and earnings and unless the acts of defendants are restrained by this Court plaintiffs will continue to suffer such irreparable damage in addition to monetary damage above specified.

XXIV.

Plaintiffs have no plain, speedy or adequate remedy available to them at law or otherwise than in equity.

Wherefore, plaintiffs pray that this Court make and enter orders as follows:

1. Requiring the defendants, and each of them, to show cause in this Court on a date and time stated in said order why they and each of them should not be restrained and enjoined from engaging in each and all of the acts hereinabove described;

2. Restraining and enjoining pendente lite the defendants and each of them and all persons, unions and organizations of employees acting by, through or under them and all members of unions and organizations acting in concert with them, from engaging in each and all of the acts herein complained of and particularly restraining and enjoining them, and each of them, and all persons, unions and organizations acting by, through or under them, from picketing or patrolling at or near the gangplank of the M.V. Capetan Yemelos, or at any point where

it is necessary for persons having business with said vessel to pass, or from doing any other act or thing tending to prevent plaintiffs from continuing the voyage of the vessel;

3. Restraining and enjoining the defendants and each of them and all persons, unions and organizations of employees acting by, through or under them and all members of unions and organizations acting in concert with them, from engaging in each and all of the acts herein complained of and particularly restraining and enjoining them, and each of them, and all persons, unions and organizations acting by, through or under them, from picketing or patrolling at or near the gangplank of the MV Capetan Yemelos, or at any point where it is necessary for persons having business with said vessel to pass, or from doing any other act or thing tending to prevent plaintiffs from continuing the voyage of the vessel;

4. Awarding to plaintiff Fianza Cia. Nav. S. A. damages in the sum of \$1,500.00 and its accruing damages at the rate of \$1,500.00 per day for the loss of use of said vessel and \$100.00 per hour, or such other sum as plaintiffs may become liable for due to their inability to move the vessel upon request, and plaintiffs' costs and disbursements; and

5. For such other and further relief as the court may deem just and equitable in the premises.

WOOD, MATTHIESSEN, WOOD &
TATUM,

/s/ JOHN D. MOSSER,
Attorneys for Plaintiffs.

[Endorsed]: Filed December 2, 1958.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

It appearing to the Court from the complaint and from the records and files herein that plaintiffs have moved for an order to show cause and that an order to show cause should be issued,

It is Hereby Ordered, Adjudged and Decreed that Wednesday the 3rd day of December, 1958, at the hour of 10:00 A.M. o'clock be and the same hereby is set for defendants to appear in the courtroom of this Court to show cause, if any there be, why an injunction pendente lite should not be granted restraining and enjoining the defendants, and each of them, and all persons acting by, through and under them, or any of them, from picketing and patrolling at and near the MV Capetan Yemelos and at points and places which must be passed by workmen and others having business on said vessel.

Dated this 2nd day of December, 1958.

/s/ WILLIAM G. EAST,
District Judge.

[Endorsed]: Filed December 2, 1958.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on regularly for hearing before the undersigned Judge of the above entitled

Court at Portland, Oregon, on December 3, 1958 upon an order to show cause why an injunction pendente lite should not be issued against the defendants as prayed for in the complaint on file herein, plaintiffs appearing by their attorneys, Wood, Matthiessen, Wood & Tatum, John D. Mosser and Robert Shoemaker, Jr. of counsel, defendants John Doe 1, whose real and true name is Ray Hein, James Doe 1, whose real and true name is Stuart J. Masters, James Doe 2, whose real and true name is Laurence Cox, James Doe 3, whole real and true name is Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, Ed Doe 1, whose real and true name is Lew Cornelius, and Lew Cornelius appearing by their attorneys Tanner and Carney, Richard R. Carney and Tolbert McCarroll of counsel, the other individually named defendants not having been served and appearing not, counsel having made opening statements, testimony and other evidence having been offered and received, various stipulations having been made by counsel during the course of the proceeding and in final argument to the Court, the Court having considered the evidence, stipulations and arguments of counsel and having rendered its opinion, makes the following

Findings of Fact

I.

Plaintiff Fianza Cia. Nav. S. A. is, and at all times herein mentioned was, a corporation duly incorporated and existing under and by virtue of the laws of the Republic of Panama.

II.

Plaintiff Frachten Treuhand GNBH is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of Germany.

III.

Said individually named and served and appearing defendants are each citizens and residents of the State of Oregon and of a State or County different from that of each of the plaintiffs.

IV.

Defendant John Doe 1, whose real and true name is Ray Hein, is a member of the Sailors' Union of the Pacific.

V.

Defendants James Doe 1, 2 and 3, whose real and true names are Stuart J. Masters, Laurence Cox and Vincente Otiz respectively, are members of the Marine Cooks and Stewards.

VI.

Defendant Ray H. Robinson is the Business Manager of the Marine Engineers Beneficial Association Local No. 41.

VII.

Defendant J. Sloan is the Port Agent of the National Organization of Masters, Mates and Pilots Local No. 90 at Portland, Oregon.

VIII.

Defendant Art Coleman is the Business Agent of the Marine Firemen's Union at Portland, Oregon.

IX.

Defendant Ed Doe 1, whose real and true name is Lew Cornelius, is the Secretary-Treasurer of the Joint Council of Teamsters No. 37 at Portland, Oregon, and said defendant Lew Cornelius is also the Secretary Treasurer of the Teamsters' Local No. 162 at Portland, Oregon.

X.

Each of said individually named defendants was sued not only individually but also as a representative of all of the members of the unincorporated association of which said individual defendant is an officer or member. For the purposes of the hearing held and the relief hereinafter concluded due plaintiffs, each of said individually named defendants is a proper representative of all of the members of the unincorporated association of which such individual defendant is an officer or member.

XI.

Plaintiff Fianza Cia. Nav. S. A. is the owner and operator of the MV Capetan Yemelos. Said Capetan Yemelos is a vessel of 14,551 dead weight tons, constructed in Japan in 1956, and which is duly registered at the Port of Monrovia, Liberia and flying the Liberian flag as a vessel with Liberian registry.

XII.

On December 1, 1958, said SS Capetan Yemelos arrived at the Port of Portland, Oregon, to load a cargo of barley, pursuant to a voyage charter for said vessel made by said owner with Frachten Treu-

hand GNBH for the carriage of said cargo from the Port of Portland, Oregon to a Port within the Antwerp-Hamburg Range on the Continent of Europe. On its arrival at Portland, said vessel docked at the Irving Dock where it now is.

XIII.

Said MV Capetan Yemelos had on its arrival at Portland aboard a full crew of officers and men who, with one exception, were of Greek nationality, the one exception being a British subject of Greek extraction. All of said officers and men had signed a form of Articles regularly prescribed by the Liberian Government, which Articles were opened in a foreign port and are unexpired and in effect and which govern the wages and other terms and conditions of employment of said officers and crew aboard said vessel. The wage scale specified in said Articles for each officer and other member of the crew is in accord with the prevailing rates paid for the same positions aboard Greek flag vessels pursuant to a collective agreement negotiated between all Greek Seamen's Unions and shipowners. At no time herein mentioned was there, nor is there now, any dispute between the owners of said vessel or her master and any of the members of the crew of said vessel concerning wages, hours or conditions of employment aboard said vessel.

XIV.

Upon its arrival at the Port of Portland early in the morning of December 1, 1958, various persons, including the defendants James Doe 1, James Doe 2

and James Doe 3, whose real and true names respectively are Stuart J. Masters, Laurence Cox and Vincente Otiz, appeared and began to patrol at and near the gangway of said vessel, wearing placards stating:

“Runaway
Flagships
Threaten American
Merchant Marine
National Security
Protest
Against
S.S. Capetan Yemelos”

Said persons were identified by said placards as representing the International Transport Workers Federation, with which all of the unincorporated labor organizations whose members are herein defendants are affiliated.

XV.

Said patrolling was being carried out by said men acting as agents for the Marine Cooks and Stewards Union and the Sailors Union of the Pacific; and patrolling of said vessel was also carried on by members of the Marine Fireman's Union acting as agents for said union. That no patrolling of said vessel was carried on by members of or on behalf of the National Organization of Masters, Mates and Pilots Local 90, the Marine Engineers Beneficial Association Local No. 41, Joint Council of Teamsters No. 37, or Teamsters Local No. 162, except that all of said patrolling was pursuant to a resolu-

tion adopted by the International Transport Workers Federation at Hamburg, Germany, on or about November 14, 1958.

XVI.

There is no labor dispute between plaintiffs or either of them and the defendants or any of them or between the members of the crew of said MV Capetan Yemelos and the defendants or any of them. None of the defendants has made any demand upon plaintiffs, the Master of said vessel or any local agent for said vessel concerning wages, hours or working conditions aboard said vessel, or the right to represent employees aboard said vessel.

XVII.

The owner, operator and charter of said vessel are entirely foreign and not controlled directly or indirectly by United States citizens who might be under a duty to bargain collectively with American Unions.

XVIII.

As a result of said patrolling employees of independent contractors with whom plaintiffs had contracts have been persuaded and induced not to carry on their work aboard said vessel and said vessel has been entirely idle. Plaintiffs have been prevented from continuing the operation of the vessel and from fulfilling contractual obligations which they have assumed. Plaintiff Fianza Cia. Nav. S. A. is suffering damage while such patrolling continues in an amount in excess of \$1,500.00 per day for the loss of use of said vessel and if said

picketing is continued will be prevented from employing said vessel and from carrying out the terms of said charter party and may lose other charter parties. As a result of said vessel's inability to load, demand was made upon plaintiffs by the owners of said Irving Dock that the vessel leave said Dock at 11:00 A.M. December 1, 1958, or pay damages at the rate of \$100.00 per hour thereafter in accordance with the tariff published by the owners of said Dock; but as a result of defendants' said patrolling, plaintiffs were unable to secure a pilot or tugs necessary to move the vessel from said dock. In addition to the foregoing, the plaintiffs and each of them have and are continuing to suffer irreparable damage and injury to their reputations for honesty, fair dealing and the carrying out of contractual obligations. All of the acts of the defendants and each of them hereinabove described were designed to and have caused plaintiffs irreparable loss of business and earnings and unless the acts of defendants are restrained by this Court plaintiffs will continue to suffer such irreparable damage in addition to monetary damage above specified.

XIX.

Plaintiffs own, charter and operate other vessels calling at the Port of Portland and other ports within the jurisdiction of this Court in international trade and commerce.

XX.

Defendants will continue to patrol and protest

against said MV Capetan Yemelos and to take similar action and other harassing action against other vessels of the plaintiffs of a similar nature unless restrained and enjoined from so doing.

XXI.

All of said patrolling and protesting by defendants has been entirely peaceful, and without violence or threats of violence.

XXII.

Plaintiffs have no adequate remedy at law.

Whereupon the Court makes the following

Conclusions of Law

I.

The Court has jurisdiction of the parties and the subject matter by reason of diversity of citizenship and an amount in controversy in excess of \$10,000.

II.

Both because the term "labor dispute", as used in the Norris-LaGuardia Act, Oregon's Little Norris-LaGuardia Act, the Taft-Hartley Act, and other statutes of the United States and Oregon, does not contemplate a dispute entirely foreign in nature such as that here presented, and because the evidence does not otherwise show it, there is no labor dispute between plaintiffs, or any of them, and defendants, or any of them, nor between defendants, or any of them and the officers and members of the crew of the MV Capetan Yemelos, or any of them, nor between plaintiffs, or either of them and any of the officers or members of the crew of said vessel.

III.

The patrolling and protesting by some of defendants pursuant to said Resolution of the International Transport Workers Federation and their threats to continue the same constitute acts of unlawful interference with and restraint upon international commerce, and particularly the right of plaintiffs to carry out an international voyage and charter with a vessel owned, operated and chartered by foreign citizens and lawfully registered by a friendly foreign nation and manned by an alien crew under foreign shipping Articles.

IV.

Plaintiffs are entitled to an order restraining and enjoining the individually named defendants who appeared herein and all of the members of the respective Unions of which they are members and officers, as set forth in Finding IV-IX during the pendency of this suit, from patrolling, placing signs or distributing printed matter protesting the MV Capetan Yemelos, or any other vessel registered under a foreign flag and manned by an alien crew under foreign Articles and owned, operated or chartered by the plaintiffs or either of them that may hereafter arrive within the jurisdiction of this Court, or protesting the registry of said MV Capetan Yemelos or any other such vessel of the plaintiffs under a foreign flag, at or near the gangplank of said MV Capetan Yemelos or any other such vessel of the plaintiffs or at or near any dock where said MV Capetan Yemelos or any other such vessel

of the plaintiffs may be berthed or at any other place where it is necessary for persons having business with said MV Capetan Yemelos or any other such vessel of the plaintiffs to pass, within the jurisdiction of this Court, or from doing any other act or thing tending to prevent plaintiffs from loading any of said vessels or otherwise continuing the use of any such vessel in trade and commerce.

V.

An injunction bond in the amount of \$500.00 shall be filed by plaintiffs.

Dated this 4th day of December, 1958, at 12:00 A. o'clock at Portland, Oregon.

/s/ WILLIAM G. EAST,
United States District Judge.

[Endorsed]: Filed December 4, 1958.

In The United States District Court
For The District of Oregon

No. 10101

FIANZA CIA, NAV. S. A., a corporation, and
FRACHTEN TREUHAND GNBH., a corporation,
Plaintiffs,

vs.

WILLIAM BENZ, et al., Defendants.

INTERLOCUTORY INJUNCTION

This matter having come on regularly for hear-

ing before the undersigned judge of the above entitled court at Portland, Oregon, on December 3, 1958 upon an order to show cause why an injunction pendente lite should not be issued against the defendants as prayed for in the complaint on file herein, plaintiffs appearing by their attorneys Wood, Matthiessen, Wood & Tatum, John D. Moser and Robert Shoemaker, Jr. of counsel, defendants John Doe 1, whose real and true name is Ray Hein, James Doe 1, whose real and true name is Stuart J. Masters, James Doe 2, whose real and true name is Laurence Cox, James Doe 3, whose real and true name is Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, Ed Doe 1, whose real and true name is Lew Cornelius, and Lew Cornelius appearing by their attorneys Tanner and Carney, Richard R. Carney and Tolbert McCarroll of counsel, the other individually named defendants not having been served and appearing not, counsel having made opening statements, testimony and other evidence having been offered and received, various stipulations having been made by counsel during the course of the proceeding and in final argument to the Court, the Court having considered the evidence, stipulations and arguments of counsel and having rendered its opinion and made and filed its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed that the defendant John Doe 1, whose real and true name is Ray Hein, individually and as a representative of all of the members of the Sailors Union of the Pacific, James Doe 1, James Doe 2 and James Doe

3, whose real and true names respectively are Stuart J. Masters, Laurence Cox and Vincente Otiz, individually and as representatives of all of the members of the Marine Cooks and Stewards, Ray H. Robinson, individually and as a representative of all of the members of the Marine Engineers Beneficial Association Local No. 41, J. Sloan, individually and as a representative of all of the members of the National Organization of Masters, Mates and Pilots Local No. 90, Art Coleman, individually and as a representative of all of the members of the Marine Fireman's Union, Ed Doe 1, whose real and true name is Lew Cornelius, individually and as a representative of all of the members of the Joint Council of Teamsters No. 37, Lew Cornelius, individually and as a representative of all of the members of Teamsters Local No. 162, and all of the members of the Sailors Union of the Pacific, Marine Cooks and Stewards, Marine Engineers Beneficial Association Local No. 41, National Organization of Masters, Mates and Pilots Local No. 90, Marine Fireman's Union, Joint Council of Teamsters No. 37 and Teamsters Local No. 162, and all other persons acting for, by, through, under or in concert with them, Be And They Hereby Are Restrained And Enjoined, during the pendency of this suit from patrolling, placing signs or distributing printed matter protesting the MV Capetan Yemelos or any other vessel registered under a foreign flag and manned by an alien crew under foreign Articles and owned, operated or chartered by the plaintiffs or either of them that may here-

after arrive within the jurisdiction of this Court, or protesting the registry of said MV Capetan Yemelos or any other such vessel of the plaintiffs under a foreign flag, at or near the gangplank of said MV Capetan Yemelos or any other such vessel of the plaintiffs or at or near any dock where said MV Capetan Yemelos or any other such vessel of the plaintiffs may be berthed or at any other place where it is necessary for persons having business with the said MV Capetan Yemelos or any other such vessel of the plaintiffs to pass, within the jurisdiction of this Court, or from doing any other act or thing tending to prevent plaintiffs from loading any of said vessels or otherwise continuing the use of any such vessel in trade and commerce.

It Is Further Ordered that the United States Marshal for the District of Oregon be and he hereby is ordered and directed to serve a copy of this order upon all persons doing any of the things hereby restrained and enjoined.

Dated this 4th day of December, 1958 at 12:00 M.

/s/ WILLIAM G. EAST,
United States District Judge.

Tendered by

/s/ JOHN D. MOSSER,
Of Counsel for Plaintiffs.

[Endorsed]: Filed December 4, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Fianza Cia, Nav. S. A., a corporation, and Frachten Treuhand GNBH., a corporation, plaintiffs above named, and to Wood, Matthiesen, Wood & Tatum and John D. Mosser, their attorneys:

You, and Each of You, will please take notice that defendants Leroy Hein, Stuart J. Masters, Lawrence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, Lew Cornelius, and each of them, intend to appeal and do hereby appeal to the United States Court of Appeals for the Ninth Circuit from that certain Interlocutory Injunction entered in the above entitled court and cause on or about December 4, 1958, wherein and whereby the defendants above named, and each of them, individually and as representatives of the members of various unions, and all other persons acting for, by, through, under, or in concert with them, were restrained and enjoined during the pendency of the above entitled suit from patrolling, placing signs or distributing printed matter protesting the MV Capetan Yemelos, or any other vessel registered under a foreign flag and manned by an alien crew under foreign articles and owned, operated or chartered by the plaintiffs, or either of them, that may hereafter arrive within the jurisdiction of this court and from doing the other things set out in said injunction order, and said defendants appeal from

said Interlocutory Injunction and from each and every part thereof, pursuant to the provisions of Title 29 USCA Section 110 and Title 28 USCA Section 1292.

Dated December 30, 1958.

TANNER & CARNEY,
/s/ RICHARD R. CARNEY,
Attorneys for Defendants.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 31, 1958.

[Title of District Court and Cause.]

BOND

Know All Men By The Presents: That we, LeRoy Hein, Stuart J. Masters, Laurence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, and Lew Cornelius as principals, and Mabel Doane as surety, are each held and firmly bound unto Fianza Cia, Nav. S. A. and Frachten Treuhand Gnbh., in the sum of Two Hundred Fifty (\$250.00) Dollars, lawful money of the United States of America, to be paid to the said Fianza Cia, Nav. S. A. and Frachten Treuhand Gnbh., which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Now The Condition of this obligation is such that if the above bounden, LeRoy Hein, Stuart J. Mas-

ters, Laurence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman and Lew Cornelius as principals, and Mabel Doane as surety, shall well and truly pay or cause to be paid unto the above named Fianza Cia, Nav. S. A. and Frachten Treuhand Gnbh., the costs adjudged herein if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the injunction is modified, then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals this 31st day of December, 1958.

/s/ RAY H. ROBINSON,

/s/ J. SLOAN,

/s/ ART COLEMAN,

/s/ LEW CORNELIUS,

Principals.

/s/ LeROY HEIN, R.R.C.,

/s/ STUART J. MASTERS,

/s/ LAURENCE COX,

/s/ VINCENTE OTIZ,

Principals.

/s/ MABEL DOANE,

Surety.

State of Oregon,

County of Multnomah—ss.

I, Mabel Doane, being first duly sworn, on oath depose and say: That I as a resident of said county and state, and a freeholder therein, and am worth the sum of \$500.00 over and above all my just debts

and legal liabilities, and exclusive of property exempt from execution, so help me God.

/s/ MABEL DOANE.

Subscribed and sworn to before me this 31st day of December, 1958.

[Seal] /s/ RICHARD R. CARNEY,
Notary Public for Oregon. My Commission Expires March 22, 1962.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 31, 1958.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH DEFENDANTS INTEND TO RELY UPON APPEAL

Come now the defendants Leroy Hein, Stuart J. Masters, Lawrence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, Lew Cornelius, and each of them, and state that the following are the points upon which said defendants intend to rely on appeal:

I.

The court erred in making Conclusion of Law No. I in which the court concluded that it had jurisdiction of the parties and the subject matter by reason of diversity of citizenship and an amount in controversy in excess of \$10,000.00, for the reason that the evidence fails to show an amount in controversy in excess of \$10,000.00 and for the rea-

son that there is a lack of diversity required of all the parties on one side as against all the parties on the other side because such diversity is determined by the citizenship of the individual members of the unions sued as a class in this suit.

II.

The court erred in making Finding of Fact No. XVI and Conclusion of Law No. II that there is no labor dispute and in failing to find that this case was one involving or growing out of a labor dispute within the meaning of the Norris-LaGuardia Act.

III.

The court erred in making Conclusion of Law No. III in which the court concluded as follows:

“The patrolling and protesting by some of defendants pursuant to said Resolution of the International Transport Workers Federation and their threats to continue the same constitute acts of unlawful interference with and restraint upon international commerce, and particularly the right of plaintiffs to carry out an international voyage and charter with a vessel owned, operated and chartered by foreign citizens and lawfully registered by a friendly foreign nation and manned by an alien crew under foreign shipping Articles.”

on the ground and for the reason that the conduct of the defendants in patrolling and protesting did not constitute unlawful conduct either under the

laws of the United States or the laws of the State of Oregon.

IV.

The court erred in making Conclusion of Law No. IV to the effect that plaintiffs are entitled to a restraining order enjoining the defendants from patrolling or picketing its vessel for the reason that the court is without jurisdiction to grant such injunctive relief by the provisions of the Norris-La-Guardia Act.

V.

The court erred in making Finding of Fact No. XVII which reads as follows:

“The owner, operator and charter of said vessel are entirely foreign and not controlled directly or indirectly by United States citizens who might be under a duty to bargain collectively with American Unions.”

for the reason that there was no evidence produced with respect to the actual ownership of the plaintiff corporations, and the knowledge of the ownership of the plaintiff corporations was exclusively in the possession of the plaintiffs.

TANNER & CARNEY,
/s/ RICHARD R. CARNEY,
Attorneys for Defendants.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 31, 1958.

[Title of District Court and Cause.]

ORDER EXTENDING TIME IN WHICH
TO FILE RECORD ON APPEAL

This matter coming on for hearing upon the application of the appealing defendants for an order extending the time in which to file the record on appeal and docket the cause in the Court of Appeals, and it duly and satisfactorily appearing to the court that the notice of appeal was filed herein on December 30, 1958, and that the time for the filing of the record on appeal has not yet expired and that the testimony has not yet been transcribed by the court reporter and may not be transcribed by the reporter in time for transmission to the Court of Appeals within forty days from said time and the court being fully advised,

It Is Hereby Ordered that the time within which to file and docket the record on appeal in the above entitled cause in the Court of Appeals be and the same hereby is extended to March 30, 1959.

Dated January 19th, 1959.

/s/ WILLIAM G. EAST,
Judge.

This order presented by

/s/ TOLBERT H. McCARROLL,
Of Attorneys for Defendants.

It Is Hereby Stipulated and Agreed by and between the parties hereto through their respective counsel that an order may be entered herein extending the time to file the record on appeal and docket

the cause in the appellate court to and including March 30, 1959.

/s/ JOHN D. MOSSER,
Of Attorneys for Plaintiffs.

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed January 19, 1959.

[Title of District Court and Cause.]

ORDER TO TRANSMIT EXHIBITS

This matter coming on for hearing upon the application of the appealing defendants for an order directing the clerk of this court to transmit the original exhibits on file herein to the Court of Appeals as a part of the record in this cause and it duly and satisfactorily appearing to the court that said exhibits are necessary for an understanding of the transcript and record herein and the court being fully advised,

It Is Hereby Ordered that the clerk of this court transmit the original exhibits on file in the above entitle cause to the Court of Appeals for the Ninth Circuit as part of the record on appeal therein.

Dated March 16, 1959.

/s/ WILLIAM G. EAST,
Judge.

Presented by:

/s/ RICHARD R. CARNEY,
Of Attorneys for Defendants.

[Endorsed]: Filed March 16, 1959.

[Title of District Court and Cause.]

DOCKET ENTRIES

1958

- Dec. 2—Filed complaint.
- 2—Issued summons—to marshal.
- 2—Entered Order referring to Judge East. S.
- 2—Filed and entered order to show cause—
Dec. 3, 1958 at 10:00 a.m. E.
- 2—Issued subpoena—3 copies—to plaintiffs' attys.
- 3—Record of hearing on Order to show cause; statements of counsel; evidence adduced; Arguments of counsel, and Entered Order continuing to December 4, 1958, at 9:45 A.M., submitted. E.
- 4—Filed and Entered Findings of Fact and Conclusions of Law. E.
- 4—Filed and Entered Interlocutory Injunction. E.
- 8—Filed Summons—with Marshal's returns.
- 8—Filed Subpoena—with Marshal's return.
- 8—Filed Marshal's returns on Order to Show Cause.
- 15—Filed Transcript of Judge East's Opinion, dated December 4, 1958. E.
- 22—Filed Answer and Demand for jury trial.
- 31—Filed Notice of Appeal by defts. Leroy Hein, et al.
- 31—Filed Bond on Appeal.
- 31—Filed Statement of Points.

1958

31—Filed Designation of Contents of record on appeal.

1959

Jan. 19—Filed and Entered Order extending time for defts to file and docket appeal to and including March 30, 1959. E.

Mar. 16—Filed and Entered Order to transmit exhibits to C of A. E.

23—Received copy of letter from C of A extending time to April 20, 1959 to docket appeal.

Apr. 13—Filed Reporter's Transcript of Proceedings.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Order to show cause; Findings of fact and conclusions of law; Interlocutory injunction; Notice of appeal; Bond; Statement of points upon which defendants intend to rely upon appeal; Designation of contents of record on appeal; Order extending time in which to file record on appeal; Order to transmit exhibits and Transcript of docket entries constitute the record on appeal from an interlocu-

tory injunction of said court in a cause therein numbered Civil 10101, in which Leroy Hein, Stuart J. Masters, Lawrence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman and Lew Cornelius are defendants and appellants and Fianza Cia, Nav. S. A. a corporation and Frachten Treuhand GNBH, a corporation are plaintiffs and appellees; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellants, and in accordance with the rules of this court.

I further certify that there is enclosed herewith the reporter's transcript of proceedings, together with a transcript of Judge East's Opinion and Exhibits 1 to 5, inclusive, 6-A and B and 7.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellants.

In Testimony Whereof I have hereunto set my hand affixed the seal of said court in Portland, in said District, this 17th day of April, 1959.

[Seal]

R. DE MOTT,
Clerk,

/s/ By THORA LUND,
Deputy.

United States District Court
District of Oregon

Civil No. 10101

FIANZA CIA Nav. S. A., a corporation, and
FRACHTEN TREUHAND, G.m.b.h., a corporation,
Plaintiffs,

vs.

WILLIAM BENZ, et al; H. A. ROBINSON, et al.,
RAY H. ROBINSON, et al; J. SLOAN, et al;
CARL H. ANDERSON, et al; ARTHUR
COLEMAN, et al; MICHAEL E. STEELE,
et al; LEW CORNELIUS, et al; WILLIAM
BENZ, et al; RALPH DOE 1, et al,
Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: Honorable William G. East, U. S. District Judge.

U. S. Courthouse, Portland, Oregon, December 3rd and 4th, 1958.

Appearances: Messrs. John D. Mosser and Robert C. Shoemaker, Jr., Attorneys for Plaintiffs; Messrs. Richard R. Carney and Tolbert H. McCarroll, Attorneys for Defendants as set forth in the following pages. [1]*

(Whereupon the following proceedings were had:)

The Court: The Court will be obliged if appear-

* Page numbers appearing at top of page of Reporter's Transcript of Record.

ances on behalf of the plaintiff will be read into the record.

Mr. Mosser: Plaintiff is ready, your Honor.

The Court: Names of counsel of record?

Mr. Mosser: John D. Mosser and Robert Shoemaker.

The Court: May the Court have the benefit of being advised as to the appearances of the defendants and their respective counsel?

Mr. Carney: Your Honor, I am Richard Carney with Tanner & Carney, with Tolbert H. McCarroll. We are representing those of the defendants who have actually been served. The first defendant named, William Benz, has not been served. Only one member of the Sailors' Union of the Pacific, LeRoy Hein, has been served and he is not an officer. But we do represent him.

The Court: Is he named as a defendant?

Mr. Carney: No. He would be a John Doe, I imagine.

The Court: I see.

Mr. Carney: H. A. Robinson has not been served and no officers of the Marine Cooks and Stewards have been served.

Ray H. Robinson who is the agent for the Marine Engineers Beneficial Association, Local 41, has been served and we do represent Mr. Robinson.

J. Sloan has been served and we represent [2] him. Carl H. Anderson, Ernest E. Baker, and so on, of the Longshoremen's Union, my understanding is that they have not been served.

Arthur Coleman, whose true name is Art Coleman, has been served and we represent him.

Michael E. Steele has not been served. Lew Cornelius, who is the Secretary-Treasurer of Local 162 of the Teamsters' Union, has been served and we do represent him.

William Benz, again, has not been served nor have any officers of the Seafarers' International Union. But we are making no appearance on their behalf.

Neither has anyone been served for the National Maritime Union, and so we are making no appearance for that defendant.

Mr. Mosser: At this point I think it would be appropriate: After drawing this complaint yesterday I found information which leads me to believe that the International Longshoremen's & Warehousemen's Union have not been a part of this conspiracy and so they were not served. I would move to dismiss as against Carl H. Anderson, Ernest E. Baker and William Does who are named in the complaint as representatives of that union and its membership.

The Court: Your motion will be granted.

Mr. Moser: May I ask counsel one question? I was informed that the Marshal had also served some pickets down [3] at the dock. Are you representing them?

Mr. Carney: Yes. Yes, that's true. Of course, they are John Does as far as the pleadings are concerned, but their true names are Stuart J. Masters—

The Court: I wonder, for the sake of the record would you identify them with which one of the groups of defendants named as the unions?

Mr. Carney: Well, these—all three of them are members of the Marine Cooks and Stewards Union, which is the second union which is——

The Court: So that would be probably James Doe 1, James Doe 2 and James Doe 3?

Mr. Carney: Yes, I imagine.

The Court: And their true names, sir?

Mr. Carney: Stuart J. Masters, Lawrence Cox, and the third name is Vincente Otiz, O-t-i-z (spelling). They are members of that union but they are not officers.

The Court: I understand. Mr. Carney, I don't know if this is a fair question to ask or not, and I want counsel to understand that the Court makes no particular issue about it one way or the other. Do I understand, for example, the officers of the Sailors' Union of the Pacific, do they voluntarily submit or do they——

Mr. Carney: They do not voluntarily submit.

The Court: Thank you. The officers of the Marine Cooks [4] and Stewards Union, do they voluntarily submit or do they wish to——

Mr. Carney: No. They do not voluntarily submit.

The Court: Thank you. Now, apparently there has been no officer or any member of the Joint Council of Teamsters 37 served.

Mr. Carney: Well, Lew Cornelius is the Secretary-Treasurer of the Joint Council No. 37 and he is also the Secretary-Treasurer of Teamsters Local No. 162. So, he is the same person. So, to that extent——

The Court: Well, I will call him Ed Roe 1 of the Joint Council of Teamsters, then.

Mr. Carney: Yes.

The Court: Then, I take it that no officer or member of the Seafarers' International Union voluntarily submits.

Mr. Carney: That's correct.

The Court: Thank you. As well as two members of the National Maritime Union?

Mr. Carney: Yes. That's right.

The Court: Thank you.

Now, what is the plaintiffs' position in the matter? Do you wish to proceed against those who have been served?

Mr. Mosser: It would be our wish, your Honor, to proceed against those who have been served, understanding that an injunction would not bind anybody who was not before the Court; [5] though, leaving it open to not dismissing the case against those people but leaving it open to serve them later on should it prove desirable.

The Court: That would be your privilege.

Does counsel for the plaintiff desire to make an opening statement?

Mr. Mosser: I will make a brief statement, your Honor, because I think some background to this might be helpful. Of course, much will depend upon the facts as they come out.

But there have been certain cases very similar to this that I think your Honor might not be fully familiar with, perhaps he is. Three of them were in this jurisdiction, the District, arising in 1952

and concerning the vessel *Riviera*. Those cases were handled by Judge Solomon. They differed slightly from this in that the dispute arose with part of the crew of the vessel going on strike.

The Judge decided the strike was unfounded and thereafter the Sailors' Union of the Pacific took up picketing for the crew. The Judge enjoined the Sailors' Union of the Pacific and then the Masters, Mates and Pilots took up picketing of the vessel, they claiming that they wanted to place their own men aboard and were not interested in the crew. But the Judge actually found that they were backing up the SUP's picketing for the crew and enjoined them also.

Then the Seafarers' International Union, [6] Atlantic and Gulf District, came into the picture, picketing the vessel and claiming that they were not interested in the crew, they didn't want to put their own members aboard, all they were interested in was raising wage rates aboard the vessel so that they would be comparable to and competitive with those on vessels with which their members had contracts and were employed.

The Judge again found that the picketing of that union was to back up the SUP and MMP in their previous efforts on behalf of the crew and and enjoined them.

Now, I think in all of these cases the defendants were maintaining that this was a labor dispute; that the Court had no jurisdiction because jurisdiction should be in the National Labor Relations Board; if any unfair labor practices were involved

that Taft-Hartley had pre-empted the field and that the Norris-LaGuardia Act prevented the District Court from having jurisdiction to enter an injunction.

Despite those claims the Court did, as I have said, grant the injunctions in all three cases and, I believe, Judge Solomon in the final opinion he gave summarized briefly his feelings as follows:

“In the previous decisions involving the Riviera cases I pointed out that these cases involved a foreign corporation owning a foreign vessel registered under a foreign flag and that [7] the officers and crews were all foreign nationals. I believe I also indicated that merely because a foreign vessel calls at an American port does not entitle an American union to picket the vessel nor does it require the owner to hire American seamen nor does it enable to the American union to require the vessel to pay its foreign officers and crews wages comparable to those paid to American officers and crews.

In the last case I indicated that the problem of the sale of American-built vessels to foreign nationals who registered the ship under foreign flags was a problem for the Executive and Legislative branches of the Government and was not a problem for the Courts.

Whatever injustices may result, it is not for the Courts to try to solve it.”

There were appeals taken from those injunctions to the Ninth Circuit Court of Appeals and those appeals were dismissed, the cases came back here for hearing on damages.

Judge Solomon awarded damages. The Court of Appeals affirmed, and the Supreme Court of the United States granted certiorari.

In the opinion for the Court Mr. Justice Clark——

The Court: Just for my notes, would you give me the citation of that? [8]

Mr. Mosser: It is in 1 Lawyers Edition 2d—do you have the page number of that?

Mr. Carney: No. I have the 87 Supreme Court Reporter, 699 and the—I think I have the U. S.

The Court: Do you have the U. S. Report?

Mr. Carney: 353 U. S., 138.

The Court: Thank you. Of course that went forward purely upon the Oregon law.

Mr. Mosser: Well, the question that was raised and decided in the Supreme Court was whether the Taft-Hartley had pre-empted the field which was the defense that they were still arguing; that this Court had never had jurisdiction of the matter because of the Taft-Hartley.

Reading just two brief excerpts from the opinion of the Supreme Court:

“While the petitioners in this diversity case present several questions, the sole one decided is whether the Labor Management Relations Act of 1947 applies to a controversy involving damages resulting from the picketing of a foreign ship operated entirely by foreign seamen under foreign articles while the vessel is temporarily in an American port. We decide that it does not.”

And their concluding statement of the Court's opinion was this:

“For us to run interference in such a [9] delicate field of international relations there must be present the affirmative intention of Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain.

We, therefore, conclude that any such appeal should be directed to Congress rather than to the Courts.”

The Court: Anticipating what may be the position of the defendants in this matter which, I would assume, would be the same as in the New York case——

Mr. Mosser: I don't know what their position would be. In all of the cases that I have handled, your Honor, they have argued that Taft-Hartley and Norris-LaGuardia has deprived the Court of jurisdiction where there is a labor dispute to enter an injunction and that the picketing involved in these cases involves a labor dispute.

Now, there is one more case that arose in the Court of Tacoma. It was brought before Judge Boldt in which—this was in July or August of 1957. In that case, as in this, a protest was made. A little picket boat went out and circled around a Liberian flag vessel of Panamanian corporate ownership, saying, “Picket boat. Unfair to American seamen. [10] We protest the loss of our jobs to foreign vessels.” The suit was brought very similar

to this. The unions themselves were the parties defendant. Practically all of the unions except the Teamsters, I think, that are involved in this case were sued there.

Judge Boldt found, however, that the picketing was being conducted by the Marine Cooks and Stewards and the injunction which he entered ran solely against them.

Now, again, over the same type of arguments which had been made in all these cases concerning Norris-LaGuardia and Taft-Hartley the Court did enter an injunction and, again, the Court emphasized that the problem here was an economic dispute that was trying to overturn our national policy as reflected in treaties and free trade agreements, and so on, and that if these men wanted an appeal it should be to Congress and the Executive which have fashioned those laws and treaties rather than to the Courts.

The Court: Well, in either the Riviera cases before Judge Solomon or this case before Judge Boldt was there a contention made that the true owners were American interests?

Mr. Mosser: No, there was not, your Honor. There was some questioning in that regard in the Tacoma case, but no evidence to establish such ownership.

The Court: I see.

Mr. Mosser: Now, there is one case that your Honor may [11] have heard of and it may have been the precedent for the decision that was

reached in New York last Saturday in a proceeding very similar to this, contrary to the cases I have cited. The Peninsular & Occidental Company had a ship running between, I think it was, Cuba and Florida. It applied for a subsidy from the Federal Government for that run and it didn't get it. So then it formed three Liberian corporations and it sold the vessel to one of them and through elaborate chartering arrangements chartered it and continued it in the same run.

Now, even though they had this fiction of the Liberian corporate ownership the officers of Peninsular & Occidental were the officers of these Liberian corporations.

Peninsular & Occidental which reserved the right, I believe, to hire the master and to hire any other member of the crew, the vessel continued to employ many American—United States citizens as seamen. It engaged in this regular run back and forth between a United States port and Cuba. It submitted to U. S. Coast Guard jurisdiction and inspections.

Well, the National Labor Relations Board ordered an election in that case, saying, "This is an American employer" and, I think, quite properly so.

Mr. Carney: Do you have the citation on that, Mr. Mosser?

Mr. Mosser: I have a copy of the decision here which I would be glad to show to counsel and the Court. I only have [12] one. And I could have more photostats of it made.

Mr. Carney: We can get it later.

Mr. Mosser: But I have the test of the NLRB decision.

Now, there is plenty of precedent, I think, for the action of the Supreme Court, Judge Solomon, and Judge Boldt, in these cases. It's not a question of whether Congress could make these ships subject to our labor laws. It is just that they hold that there has been no intention to——

The Court: I understand.

Mr. Mosser: ——and that obviously you have got delicate international relations here where, if we are going to require the employers of foreign shipping to meet our standards, they may boycott our ships in their ports.

It is also not just a problem of the runaway flags, because if the unions have the power to picket a liberian flagship because its wage rates or tax policies or anything else are below those, or different from those of the United States, it has that same right regarding the ships of Japan or Honduras or Great Britain or Norway or any country that has policies that they don't like.

While wage rates may be lower on some foreign countries than others, all of them are substantially below most of the United States, so that the same argument could justify picketing every foreign ship that came into American [13] ports.

I think that that is enough background, your Honor, for the type of law that is involved in this dispute.

The Court: I think I understand your position.

Mr. Carney: If it please the Court, Mr. Mosser

and I together went through the Riviera case from Judge Solomon's Court all the way to the Supreme Court and I don't think we will disagree very much as to what the holdings were in that case. But I do think we will disagree a great deal as to how that case will apply to the facts in this case.

Before we get into the Riviera case I would like to call the Court's attention to some matters that I think the Court ought to consider right at the very outset of this case. That is with respect to the Court's jurisdiction in the matter. Now, I am not referring merely to the jurisdictional question which is raised by the Norris-LaGuardia Act; that is, the jurisdiction of the Court to issue an injunction in labor disputes, but I am referring more particularly to the jurisdiction of the Court over the subject matter of the proceeding and over the parties.

Now, of course, the Court has jurisdiction over the parties who are served but I mean that it isn't clear to me from this pleading, complaint, which is filed in this case, upon what the theory of the plaintiff is in coming to the—to this Federal Court. [14]

In the case we find language on Page 4 and 5, I believe — at the bottom of Page 4 in Paragraph XIV and at the top of Page 5 where that paragraph concludes—that speaks of diversity of citizenship. In other places in the case we find language that suggests—I am referring now to Page 7 of the complaint and Paragraph XXI. It refers to language of unfair competition or restraint of trade which sounds in language of the Sherman Act.

In other places and in that same paragraph, indeed, there is language with respect to the purposes of picketing is to have persons who have contracts with the plaintiffs not to carry out those contracts; more particularly, in Paragraph XXXII which sounds in language of the secondary boycott as that is defined in the Taft-Hartley Act.

Now, I think that it would be proper for the Court before proceeding at all to call upon the plaintiffs to tell us what is their theory, how do they feel that they are before this Court. Are they here under a Federal statute? Are they here because of diversity of citizenship in order to enforce some state law or some wrongful conduct as defined by the state law, either common law or statute? How are they before the Court?

I think we should know that first and then proceed from there. Because, I think it will make a lot of difference. I think that it may even shorten the matter considerably. [15]

But I think we should know that and I think it will narrow our ground of inquiry and we won't be going all over the place with respect to these other acts that might or might not be involved.

So, I would suggest that counsel for the plaintiff first tell us what his theory is with respect to the jurisdiction of this Court and then I would be ready to make an opening statement with respect to our position in the matter.

The Court: Well, I don't believe that any one of these theories of jurisdiction that are set forth in the complaint—and we are speaking other than and

different as to the Court's jurisdiction being restricted by the Acts of Congress in labor matters—that is, just general jurisdiction of the subject matter—I don't believe that any of their theories as taken from their complaint, whether it be under diversity or the secondary boycott under the statute of an Act of Congress and what other grounds they may have are inconsistent. They may assert as many grounds for jurisdiction as they desire. They may stand or fall on one or more or none. So, I don't believe that the Court is in a position to order them to elect.

But in line with getting about our chore at hand I might ask counsel if they are in a position to assert any particular grounds for general jurisdiction that they claim.

Mr. Mosser: Well, your Honor, I think that primarily [16] we are relying on common law restraint of trade, the unlawful nature of a boycott in restraint of trade at common law.

Now, it may be that this case falls under the Sherman Act. I haven't myself satisfied myself that the Sherman Act applies to this situation. I think clearly this is the type of conduct the Sherman Act is talking about and the public policy that the United States has declared against. But in view of the foreign nature here I am not entirely sure that we come under that Act. And I am reserving the right at any time to plead a Sherman Act—I think all that would be necessary would be to ask for treble damages and attorneys' fees instead of single damages if this is applicable there.

On the Taft-Hartley Act, I am saying this is not a secondary boycott within the meaning of that Act.

The Court: I see.

Mr. Mosser: It is that type of conduct. But the Taft-Hartley Act doesn't apply, as the Supreme Court has held, to this situation.

The Court: Well, you will have to stand or fall on your proof.

Mr. Carney: I would like to be heard further, then, your Honor.

The Court: Yes.

Mr. Carney: I think we should make one thing quite clear with respect to what occurred in the Riviera case as [17] distinguished from this case, both in what occurred in the courts and factually what their holdings were based upon. In the Riviera case we came into court at the outset, as we are in this case, where the plaintiff, who is a shipowner, asked for a preliminary injunction to restrain the picketing of the vessel.

In that case Judge Solomon granted their temporary relief. We then appealed from that temporary injunction to the Court of Appeals. It's an appealable order because of provisions in the Norris-LaGuardia Act.

When the case was on appeal to the Court of Appeals it was dismissed but it was not dismissed on the merits.

Now, Mr. Mosser did not make that clear. It was dismissed because of mootness. In other words, after we had our appeal in the Court of Appeals the ship

left the Port of Portland and he moved to dismiss it on the ground of mootness.

The Court: I see.

Mr. Carney: So, the Court of Appeals never decided the correctness or incorrectness of the ruling of Judge Solomon with respect to the granting of the temporary injunction.

Then we came back in that case and went on with the action for damages. And the Court allowed damages. In that case it was the theory of the Court that damages were allowable because the picketing was for an unlawful purpose [18] as defined in the state law. The unlawful purpose that the Court found was the action by the unions who were doing the picketing in attempting to force the shipowner to re-employ his former crew members who went on strike when they were under Articles. The Court held that that was an unlawful purpose to try to require a shipowner to rehire a crew that had deserted or had left the ship illegally. That was the unlawful purpose. Based upon that the Court allowed damages.

We appealed the matter first, of course, to the Court of Appeals. It is very important in considering this matter that is before the Court now with respect to an injunction to understand clearly that the Court of Appeals in deciding that case on appeal from the damages judgment did not consider at all the effect of an injunction or the effect of the Norris-LaGuardia Act.

Now, I have before me the Court of Appeals decision in which Justice Murphy wrote the opinion. He

is a District Judge who was sitting temporarily on the Court of Appeals. He said:

“The district court’s jurisdiction is attacked first by reason of the Norris-LaGuardia Act provisions against injunctions and labor disputes. The appeals before us, however, have nothing to do with the injunction issued by the district court in the previous litigation between the parties at bar. [19] The Norris-LaGuardia Act is not involved in these cases and is not discussed further.”

So, the Court made it very clear that they were not going to discuss or determine anything with respect to the power or lack of power of a court with respect to injunctive relief.

Then when the case went to the Supreme Court of the United States the only question we raised there was the question of pre-emption and the Court held that the National Labor Relations Act or the Board would not have jurisdiction of this case because it involved the internal workings aboard a foreign ship.

Now, I think the thing that is very important for the Court to determine and to see at the outset is with respect to the effect of the Norris-LaGuardia Act in this proceeding.

I received early this morning from New York a copy of Judge Frederick Bryan’s decision. It is a 36-page decision. I have had a chance only to read it once. But I think I can tell the Court this: that that case, of course, as compared to the case that is before this Court is exactly the same on the facts.

It is exactly the same protest in New York as is being carried out here in Portland and in other ports.

In other words, what occurred in New York was this: The various unions who are affiliated with the ITF [20] published the fact that they were going to carry on a protest against the Liberian and various other flagships from December 1st, I think, until December 4th, a period of four days. When that was announced the shipowner promptly went into court before any protest banners or picketing or anything ever occurred and sought from the Court a decree enjoining it.

The Seafarers' International Union and the National Maritime Union voluntarily appeared in the case. They had a hearing on the matter and the Court entered its judgment—or, its order denying injunctive relief.

Now, in that case in New York as in this case here, practically the same or almost identically the same contentions were raised. They raised the question with respect—of the effect of the Sherman Antitrust Act in restraint of trade and with respect to that the Court decided that it was not applicable because what was being carried on here was simply conduct by a union in order to enhance its own union objectives.

This Court may remember the case which we tried before you involving the shuffleboards.

The Court: I recall.

Mr. Carney: That case was a case based on the Sherman Act. This Court wrote an opinion after

reading the precise language in the agreement that was tendered to the shuffleboard [21] operator and found that there were provisions in that agreement in restraint of trade. The Court will probably remember the leading case of—the Alan Bradley case vs. the Electrical Workers, which held that a union can be in violation of the Sherman Antitrust Act if the union conspires with one employer or employers to the detriment and the restraint of trade of the other employers. That was the finding of this Court in that American Shuffleboard Company case.

But in this case in New York Judge Bryan discussed the Alan Bradley case and made it abundantly clear that the protest that has been carried on here is solely for the benefit of the seamen who are carrying it on; they are not in conspiracy with any other employer and that therefore the provisions of that Act are not applicable.

He also based—the main basis of the opinion—and I'd be happy to let the Court read it, and I know the Court will want to, although I only have the one copy—the basis of the opinion was based on the Norris-LaGuardia Act. The Court traced the history of the act through the Sherman Act and through the Clayton Act and found that the conduct being carried on here was pursuant to labor dispute and that therefore the Court did not have jurisdiction to enter an injunction.

The Court said with respect to the Taft-Hartley Act, which we aren't, probably, concerned with here because, [22] apparently, the plaintiffs are not contending that it is involved, the Court said that if

they are contending that it is involved that a long line of cases have held that the only way you can get injunctive relief——

The Court: Is through the Board.

Mr. Carney: ——is through the Board. So that was the gist, as I read it this morning, of the decision in New York.

Now, I think, however, your Honor, that if it is the theory of the plaintiffs that they are before this Court on a common law restraint of trade, that to me would be an action based under common law or state law and that they are in this Court or attempting to go before this Court on a ground of diversity of citizenship.

I submit to the Court that under the proceedings—or under the statute and the cases on diversity of citizenship and, particularly, the amended statute in 1958, that it does not appear on the face of their complaint that they have alleged facts sufficient to bring them within the Acts.

In other words, there are two reasons for that: In the first place, the amount in controversy now must be ten thousand dollars. The amount that they are claiming is fifteen hundred dollars a day. And I think it is pretty well understood that this protest is only to last for four days and that will be only six thousand dollars. There is not a sufficient amount in controversy to incur the jurisdiction [23] of this Court.

There is a second reason with respect to citizenship. The citizenship in this case is this: that the plaintiffs are a Panamanian corporation and a Ger-

man corporation. So there are citizens of Germany and of Panama. The defendants in this case are a large number of international — of unincorporated associations which are unions. We are ready to show that the law in determining diversity, that it must — that they would have to be no member of any of those unions who would be either a citizen of Panama or of Germany because there would not be diversity if there would be any one citizen of Germany a member of any of those associations. And I have the cases on that.

There is no diversity if there is the same nationality on each side of plaintiff and defendant. For two reasons, therefore, your Honor: There is no diversity in this case shown on the face of the complaint; they have not alleged facts with respect to the statutory amount.

Now, we can proceed. But I would think that the Court would want to hear testimony on that matter first, because if they do have diversity here I cannot see how they can proceed further.

The Court: Thank you for your advice. I would suggest that the plaintiff put on a prima facie case showing jurisdiction on the basis of their claim by calling—— [24]

Mr. Mosser: I would just like to point out and ask Mr. Carney if he is really contending what he says with regard to diversity jurisdiction. This is a class procedure that is employed here. I will ask Mr. Carney if he won't admit that one of the questions that was involved and, I think, decided in the Riviera cases was that for diversity purposes where

you sue individuals as representatives the only citizenship that is relevant is the citizenship of those representatives.

Mr. Carney: No. That was not raised in the Riviera case.

Mr. Mosser: Well, I have your brief here.

Mr. Carney: We admitted diversity in the Riviera case.

The Court: Well, there is no concession. You will have to go forward.

Mr. Mosser: Mr. Carney, will you concede that the citizenship of the defendants who have been served is diverse from that of the plaintiffs?

Mr. Carney: Yes. The defendants that have been served, the individual people who have been served are all residents of the State of Oregon and, therefore, they are diverse to the others. I will admit that.

Mr. Mosser: Do you just wish a prima facie showing on diversity or on the case itself, your Honor?

The Court: On the case itself. As far as the record [25] shows I don't know if there is any picketing going on or——

Mr. Mosser: We will call, I think it was, Stuart J. Masters.

STUART J. MASTERS

produced as a witness in behalf of the Plaintiffs, being first duly sworn by the Clerk, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Mosser): Mr. Masters, are you a local resident of Portland? A. I am.

Q. What is your address?

A. 22 Northwest 17th Avenue.

Q. Are you a seaman by trade? A. I am.

Q. Are you serving in the steward's department or the deck crew? A. Right.

Q. Steward's or both?

A. Well, I am a steward and cook, yeah.

Q. Are you a member of the Marine Cooks and Stewards Union? A. I am.

Q. At any time since the morning of December 1st—that [26] was Monday—have you been engaged in picketing the vessel Capetan Yemelos at Irving Dock in this city?

A. I don't believe I would term it picketing. I was protesting the ship.

Q. You were walking around in the vicinity of the ship wearing some sort of a placard stating your protest? A. That is true.

Q. Were you also handing out some leaflets?

A. I was.

Mr. Mosser: I will ask the bailiff to mark these Exhibits 1, 2 and 3.

(At this point a document purporting to be a pamphlet was marked for identification as

(Testimony of Stuart J. Masters.)

Plaintiffs' Exhibit 1; a document purporting to be a pamphlet was marked for identification as Plaintiffs' Exhibit 2; and a document purporting to be a leaflet was marked for identification as Plaintiffs' Exhibit 3.)

The Court: Would you give me the name of the vessel again?

Mr. Mosser: Capetan, C-a-p-e-t-a-n Yemelos. I am not sure of the pronunciation. Y-e-m-e-l-o-s (spelling).

The Court: She is owned by which one of the plaintiffs?

Mr. Mosser: The first one, Fianza. [27]

The Court: Thank you. The Fianza would be the Liberian?

Mr. Mosser: The Panamanian corporation.

The Court: Panamanian.

Q. (By Mr. Mosser): I will ask you now, Mr. Masters, if you were distributing documents such as those shown you there as Plaintiffs' Exhibit 1, 2 and 3?

A. No; I have never seen these two. I was distributing these (indicating).

Q. You were distributing that one? A. Yes.

Q. Can you say which one? That is marked down in the lower part there. Was it marked?

A. 1010—

Q. Plaintiffs' Exhibit No. 1?

A. No. 1 that is.

Q. No. 1. But you were distributing that. But

(Testimony of Stuart J. Masters.)

to your knowledge you weren't distributing 2 or 3; is that correct?

A. No; I have never seen these before (indicating).

Q. Now, what caused you to go down to the docks to distribute these leaflets?

A. Well, we heard about—it was in *The Oregonian*—that there was a movement on in New York to start picketing Saturday night. So I felt it was our duty to do a little something out here. I asked Larry Cox to go with me.

Q. As part of your union protest against the ships; is that [28] correct?

A. I suppose you would call it that, yes.

Q. Do you have a union paper at all in your union? A. Yes. We have one printed.

Q. Is that the *Stewards News*?

A. Yes; *Stewards News*.

Q. Do you get that paper regularly?

A. Yes; it's in the hall for—

Mr. Mosser: I will ask that this issue of November 28th, 1958, be marked as an exhibit.

The Court: It will be 4, I believe.

(At this point a document purporting to be a newspaper dated November 28, 1958, was marked for identification as Plaintiffs' Exhibit 4.)

Q. (By Mr. Mosser): I will ask you, Mr. Masters, if you happen to have seen that copy of the union paper. A. No, I haven't.

(Testimony of Stuart J. Masters.)

Q. That is the union newspaper, is it not, to your knowledge?

A. That is, or a good copy of it.

Q. Now, what time did you go down to this particular ship?

A. It was at 7:30, I believe, in the morning.

Q. Was that Monday morning or yesterday?

A. That was Monday morning.

Q. Were there other persons? I think you mentioned Lawrence Cox. [29] Was he with you at that time? A. He was.

Q. Was he also wearing a banner similar to yours? A. That is true. Uh-huh.

Q. Was he passing out any of this literature?

A. Yes.

Q. Were you picketing there continuously from that time on or did other people relieve you from time to time?

A. No; we were relieved at 8:00 — about 8:00 o'clock.

Q. 8:00 o'clock yesterday morning — Monday morning? A. Uh-huh.

Q. Did you go back and picket at all after that time?

A. Yes. And I went back—then I went back, oh, let's see, I think it was at 6:00 o'clock that night.

Q. How long did you stay that time?

A. I stayed until 12:00.

Q. Did other people relieve you at that time and start picketing in your place?

A. That's right. Uh-huh.

(Testimony of Stuart J. Masters.)

Q. Did you go back at all after midnight Monday night?

A. Yes; I picketed yesterday there.

Q. What were the hours when you were picketing there yesterday? A. 12:00 to 6:00.

Q. Was it a regular shift 12:00 to 6:00? [30]

A. Yeah. Yeah.

Q. Do you know who the other people were who were picketing who relieved you in between your shift? A. No; I don't know them.

Q. Are they members of your union?

A. They—no. They wasn't members, they was just Cox and I and Otiz there.

Q. Well, were they the ones that were relieving you or were they picketing on the same 12:00 to 6:00 shift that you had?

A. There was other men, but I don't know who they were.

Q. What I am asking is, were Mr. Cox and Mr. Otiz— A. They were with me.

Q. They were with you on the same shift?

A. On the same shift.

Q. Where did you get these banners that you were wearing? A. Had them made.

Q. You had them made? A. Uh-huh.

Q. Where did you order them made?

A. Well, had them made down on Second.

Q. You had them made on Second?

A. Here in Portland. I don't know just where they were, but they were given to me.

Q. Who gave them to you?

(Testimony of Stuart J. Masters.)

A. Well, this was — a member of the Marine Club. [31]

Q. You got them from a member of the Marine Cooks and Stewards? Have you been in the Union Hall at all lately?

A. Yes; I have been in the hall.

Q. Is this protest a matter of common discussion in the Union Hall? A. I would say so.

Mr. Mosser: I think that's all the questions I have.

Cross Examination

Q. (By Mr. Carney): How long have you been going to sea, Mr. Masters?

A. About sixteen—fifteen, sixteen years.

Q. And have you shipped out of the Port of Portland most of that time?

A. Yes; most of the time.

Q. Have you shipped as a cook or a steward aboard vessels carrying cargoes of grain?

A. Oh, yes.

Q. Have you done that a number of times?

A. Oh, yes.

Q. Are there many jobs like that available at the present time?

A. Not as many as we usually have.

Q. There used to be quite a few grain runs?

A. Yes. [32]

Q. Have you observed in Portland what type of ship it is that are carrying the cargoes of grain from here now?

(Testimony of Stuart J. Masters.)

A. Yes; we have observed that.

Q. What kind of ships are they with respect to nationality?

A. Well, they're all under foreign flags or what we would term the runaway flags.

Q. The runaway flags means flags of Liberia and Panama and those places?

A. Panamanian and Honduras.

Q. On the American ships on which you sail does your union have an agreement with the American companies covering your wages and working conditions? A. Oh, yes. Sure.

Q. In other words, every ship that you work on there is an agreement between a union and the company governing your conditions?

A. Oh, yes.

Q. Is the pay that you are receiving aboard American ships substantially greater than those on these runaway flagships?

A. I presume they are.

The Court: I wonder if, for the sake of the record, we could have described what counsel and the witness have in mind when they say a runaway flagship?

Mr. Carney: I think we could probably stipulate to that, your Honor. I think it is a phrase. The words "runaway flag" [33] and "flags of necessity" or "flags of convenience," all of those terms have been applied by American unions to the Liberian flag and to the flag of Panama and to the flag of Costa Rica and other such countries,

(Testimony of Stuart J. Masters.)

which describe ships which are registered in those countries and, therefore, carry those flags; whereas, in truth and fact the ships are not owned by residents or corporations of Liberia or of Panama, but are merely registered there for tax purposes or for other economic reasons.

The Court: In other words, they are truly American bottoms?

Mr. Carney: They are either truly American bottoms or some other nationality.

The Court: Right. Is that statement acceptable to the plaintiff?

Mr. Mosser: I think so. I want to be sure that the last point was made that these are not necessarily American ships. In fact, this one is not an American — ultimate American-controlled ship that we are dealing with here. The Capetan Yemelos is a Greek crew with an ultimate Greek owner. It's a common thing, I think, for shipowners of many nations. I have seen figures in the papers. That's all I know. Forty-two per cent of these foreign—for convenience flag or necessity flagships are ultimately American-owned. That would mean 58 per cent were ultimately owned by nationals of some other country. [34]

The Court: Yes. Well, I think we are all quite in agreement that the Court's statement that in truth and fact that these were American bottoms has reference only to, as pointed out by Mr. Carney, that they are not in truth and fact owned by nationals of the country whose flags these various ships fly.

(Testimony of Stuart J. Masters.)

Mr. Mosser: I think that is a correct statement.

Q. (By Mr. Carney): Have you observed with respect to being able to find jobs that jobs have become more scarce for American seamen since the number of these foreign flagships have appeared?

A. Oh, yes. Jobs are far more scarce now than what they were.

Q. Was it because of the scarcity of jobs that has been created by these foreign flagships one of the reasons for this protest that you are carrying on?

A. I believe so. Yes.

Q. Was another reason for your protest that these foreign operators are operating at such low wage scales that it might tend to bring down the wage scale that you have under your union contract?

A. That's true.

Q. Now, you went out and wore the banner and carried out your protest by walking by this particular ship, the Capetan Yemelos, is that right?

A. That's right. [35]

Q. Did you have any conversations with longshoremen or any of the longshoremen's unions?

A. No. No, sir.

Q. Did you ask any of those longshoremen not to work the ship or anything like that?

A. Oh, no; nothing like that. We didn't consider this a banner—a strike banner. This was just purely a protest.

Q. So, as far as you know, you didn't yourself and you don't know of any relationship between your union and the Longshoremen's Union?

(Testimony of Stuart J. Masters.)

A. No. I know nothing about that.

Mr. Carney: That's all.

The Court: For the sake of the record, can we reach a stipulation as to what the wording of the banner was?

Mr. Mosser: Yes. There is a newspaper photograph which—as much of it as I could read, I quoted in the complaint. Could you agree that that which is quoted in the complaint is the text of the banner?

Mr. Carney: I think that we can say that the banner said the following: “Runaway flagships threaten American merchant marine, national security. Protest against the SS” and then the name of the ship. Then what does it say about American—American Committee of the ITF. We can stipulate that ITF [36] means International Transport Workers Federation.

The Court: All right.

Mr. Mosser: I wonder, to clear the—I think that's all the questions I have for this witness, your Honor.

(Witness excused.)

Mr. Mosser: I wonder if we could clear the record, too, a little by stipulations as to the nature of the ITF and these other unions? I will ask Mr. Carney if he would stipulate that the International Transport Workers Federation is a Federation of Unions—not a member—but of unions representing the transport trade unions of many nations and that included in it are the Teamsters Union of the

United States, International Brotherhood of Teamsters, and is included the National Maritime Union and the Seafarers' International Union. And that the Seafarers' International Union in turn is composed of several departments, one which is the Atlantic and Gulf District of the SIU, another of which is the Sailors' Union of the Pacific, another, the Marine Cooks and Stewards, another, the Marine Firemen, Oilers and Wipers, another, the Great Lakes District of the SIU, and another the Canadian District of the SIU and, finally, I believe, the Masters, Mates and Pilots are affiliated if not a part with the SIU.

Mr. Carney: Well, I can stipulate to most of that. With respect to the ITF, I cannot stipulate whether or not they [37] actually have members that belong to the union itself who are workmen as distinguished from only unions belonging to it. I don't know, frankly. I know there is such an organization as the ITF.

It was my understanding that they had members of their own also who were actually seafaring people and involved in longshoring work and other types of work, and that those unions are federated together with a number of international unions.

Now, with respect to the Seafarers' International Union, it is an international union which is composed of a number of autonomous unions, one of which is the Sailors' Union of the Pacific, another of which is the Marine Firemen's Union, and Masters, Mates and Pilots Union is affiliated with them, and various other unions of the American unions.

I don't know how that—that would be as far as I could go.

Mr. Mosser: That the Marine Cooks and Stewards—

Mr. Carney: Marine Cooks and Stewards Union is an independent union which is affiliated with the Seafarers' International Union.

Mr. Mosser: And the International Brotherhood of Teamsters which the local and council served are affiliated are also a part of the International Transport Workers Federation.

Mr. Carney: I can't say that for a certainty. I can say that the Local 162 of the Teamsters Union is a local union. [38] Joint Council No. 37 is a, you might call it, a federation of various local unions in Oregon. They are all affiliated with the International Brotherhood of Teamsters which is an international union. It is my understanding that whether they are actually affiliated with—they are at least cooperating with the ITF.

Mr. Mosser: Specifically will you admit that there is this general nationwide pattern of this boycott at this time under the ITF sponsorship?

Mr. Carney: I will not use the word "boycott." It is a protest. It's a protest. There is a difference.

Now, we are willing to stipulate that there is a national program of making a four-day protest against what the unions call runaway flags and that protest is to be carried out by a banner being displayed by a person, call him a picket if you like, near the ship. But it is not a matter of picketing

and it is not a matter of boycotting in the usual union sense of the word.

The Court: Does that clarify your position, Mr. Mosser?

Mr. Mosser: I think so, your Honor.

The Court: May I inquire to shorten this, can counsel stipulate for the record whether or not workage of this particular vessel has been stopped by reason of the individual carrying the banner?

Mr. Carney: No, we cannot stipulate to that because we [39] can't stipulate that it is stopped by reason of it.

Mr. Mosser: Will you agree that it stopped simultaneously with the——

Mr. Carney: No. You will have to put on your longshoremen with respect to that.

Your Honor, we are charged here with conspiracy with the longshoremen which we emphatically denied.

Mr. Mosser: You were not charged with that conspiracy. I stated at the opening of this hearing that my later information was that they had not participated.

The Court: I think maybe you had better go to your proof on that. Let's take a ten-minute recess here.

Mr. Mosser: All right, your Honor.

(Recess taken.)

The Court: Plaintiffs' next witness.

Mr. Mosser: I will call the vessel's chief officer, Alexandro Apostolatos. [40]

ALEXANDROS APOSTOLATOS

produced as a witness in behalf of the Plaintiffs, being first duly sworn by the Clerk, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Mosser): Are you the Chief Officer aboard the vessel Capetan Yemelos?

A. Yes, sir.

Q. Is that in this port at the present time?

A. Yes, sir.

Q. At the Irving Dock? A. Yes, sir.

Q. When did the vessel arrive there?

A. On the 13th of December, 2:45.

Q. And you had come down from Longview, is that right? A. From Longview.

Q. That was your last stop formerly? Were you to load any cargo here at Portland?

A. Yeah. We are supposed to load barley for Germany.

Q. A cargo of barley for Germany?

A. Yes, sir.

Q. And did you come here in ballast?

A. In ballast.

Q. Now, did you actually load any of that cargo?

A. No, we didn't. [41]

Q. Did you make any preparations for loading it?

A. Oh, yes. After we finished shifting boards in Longview we came here to—started loading Monday on the 1st of December. So, 7:00 o'clock in the morning they still came on board to make the prepa-

(Testimony of Alexandros Apostolatos.)

ration for the start of loading and everything was fixed until 8:30 Hugh came back and advised me that they are no going to start loading because the ship has been picketed, we had to move the ship.

Q. Were you then requested to move the ship?

A. To move the ship at 11:00 o'clock because Japanese ship had to take on our place.

Q. Did you move the ship?

A. No. I came back aboard the ship, I advised the chief engineer to have the engines ready. Everything was ready at 11:00 o'clock. But the time was past up to 11:30. So nobody was appear, no pilot. I went back there in the dock in the office and asked them what happens, so he told me.

Mr. Carney: Now, just a moment. I object to what someone on the dock told him, your Honor, as hearsay.

The Court: I will receive this evidence not as being proof of what the truth of the statements made to him were but only as to what inducement that caused him to do whatever he did.

Mr. Carney: Very well.

Mr. Mosser: You may continue. [42]

The Witness: So I went in the office and asked them if we are going to shift or not because sometimes, you see, they change mind. So they told me, "You are no going to move because no pilot or tugs come on board to shift you." He was in contact with the agent. I asked him to phone to the agent and ask him. So he said the agent knows every-

(Testimony of Alexandros Apostolatos.)

thing and we can't do anything so, "You have to stay."

Q. (By Mr. Mosser): Your ship is still in the same position, is that correct? A. Yes, sir.

Q. What is your nationality, sir?

A. Greek.

Q. Is the Capetan Yemelos in any scheduled run or does it just pick up cargo here and there?

A. Yes; just pick the cargoes up. Tramp ship. Is tramp ship.

Q. Tramp steamer? A. Yes.

Q. And the cargo you were to pick up here was a full cargo of barley for carriage to Germany?

A. Yes, sir.

Mr. Mosser: That's all.

Cross Examination

Q. (By Mr. Carney): What flag does your ship fly? [43] A. Liberian.

Q. Have you ever been to Liberia?

A. I visited—in the country of Liberia, no.

Q. You have never been in the country of Liberia? A. No.

Q. Are there any Liberian seamen aboard ship?

A. No.

Q. Is the owner of the ship, as far as you know, a Liberian?

A. I couldn't tell you. I don't know. I know only the company.

Q. How long have you been aboard this ship?

A. Aboard the ship I have only been for three months.

(Testimony of Alexandros Apostolatos.)

Q. During that period of time the ship has never gone to Liberia? A. No.

Q. Do you know if it ever has been to Liberia?

A. I couldn't tell you. I don't know.

Q. Pardon me? A. I don't know.

Q. You don't know of it ever having been there, do you? A. No, I don't.

Q. Are you sailing under Articles at the present time? A. Yeah.

Q. Where were those Articles entered into, what port? A. Rotterdam. [44]

Q. Rotterdam. Are they Liberian Articles?

A. Yes, sir.

Q. Are they Dutch Articles?

A. No; they are Liberian.

Q. How do you know that they are Liberian?

A. Because I saw them.

Q. Are they written in that language? Are they written in English? A. In English.

Q. They are written in English?

A. Yeah.

Q. Well, no Liberian Government official took part in the signing of the Articles, did they?

A. Oh, yes.

Q. Yes? They did? A. Yes.

Q. In Rotterdam? A. Yes.

Q. Do you belong to a union? A. Yeah.

Q. What union is that?

A. As we call it, this PNO is Greek union for the Greek officers.

(Testimony of Alexandros Apostolatos.)

Q. Are the members of the crew members of a union? A. Yes, they are. [45]

Q. What union is that?

A. Well, I couldn't exactly tell you for the sailors. I mean, there are a few unions. But for the officers is the PNO, Peace, as we call it.

Q. In other words, the members of the crew—

A. Yeah.

Q. —on the ship? A. Yes.

Q. Some of them belong to some unions and some of them belong to different unions; is that right? A. Yeah.

Q. In other words, all of them do not belong to the same union? A. No.

Q. Some of them do not belong to any union at all?

A. Oh, most of them, they belong.

Q. But there are some that do not?

A. Well, I don't know about this.

Q. Now, do you have in effect aboard your ship any union agreement that covered the—

A. Yeah.

Q. —wages of the members of the crew?

A. Yes, sir.

Q. What agreement is that?

A. Especially in this ship we follow the Greek Collective Agreement of 1957. [46]

Q. The Greek Collective Agreement?

A. Yeah.

Q. That is an agreement in 1957?

A. '57, yeah.

(Testimony of Alexandros Apostolatos.)

Q. Now——

A. So, every union—every Greek union is taking place in that agreement.

Q. I didn't understand what you said.

A. Well, that's the Greek Collective Agreement, all the seamen union, they belong. I mean, they agree to that agreement, all the Greek unions.

Q. Do you have a copy of that agreement?

A. Not with me.

Q. Do you have one on the ship?

A. I think so. I am not pretty sure.

Q. You are not sure whether you have a copy of the agreement?

A. I am not sure. I may find one.

Q. It might be difficult for you to find one?

A. Well, I had one. I don't remember if I have it with me.

Q. All right. Now, have you ever talked to a representative of that union with respect to the provisions of this contract?

A. Well, yes.

Q. Where? A. In Greece. [47]

Q. In Greece?

A. And last time was in, if I remember—well, Germany.

Q. In Germany?

A. In Germany. Was a representative.

Q. He came aboard the ship? A. Yeah.

Q. Now, what is your salary?

A. What is my salary?

Q. Yes. A. Is 74 pounds.

Q. And converted into American dollars?

(Testimony of Alexandros Apostolatos.)

A. By 2.80.

Q. Two hundred and eighty?

A. No; 2.80. Each pound is 2.80. Two dollars and eighty cents. And that means about——

Q. Let me ask you this: If you converted your monthly pay into American dollars, how many American dollars would you make a month?

A. Around — including overtime, you mean, or just salary?

Q. Your salary. Your base.

A. About two hundred and thirty.

Q. About two hundred and thirty dollars?

A. Yes.

Q. Then how much in dollars would you make overtime a month?

A. Overtime, around seventy dollars. [48]

Q. So you would make about——

A. It depends, you see.

Q. Yes. It depends, of course, on how much overtime you get in. A. Yeah.

Q. So, it would vary between two hundred and seventy to three hundred dollars a month?

A. Yeah.

Q. Now, how much does a regular seaman, an able seaman aboard the ship make per month in American dollars? A. Sailors, you mean?

Q. Sailors.

A. Around a hundred and twenty dollars.

Q. More or less depending on their rate and depending on how much overtime they put in?

A. No; except overtime.

(Testimony of Alexandros Apostolatos.)

Q. Oh. Then they have some overtime that would be——

A. They have some overtime. They have some extra jobs like cleaning quarters or——

Q. That would amount to, maybe, another thirty or forty dollars a month?

A. It depends. It all depends, you see.

Q. Well, in other words, they wouldn't make over three hundred a month?

A. Oh, no. [49]

Q. They would make more like two hundred a month? A. Oh, yes.

Q. Now, you said that the ship which you are presently employed by is a tramp vessel.

A. Yeah.

Q. Which means that it goes from port to port, depending on what charters it can have; is that right? A. Yes, sir.

Q. So as you know, the shipowners bid for these charters as to how much they will carry a given cargo for? That's the way you get a charter, isn't it?

A. Yeah.

Q. The lowest bidder gets to carry the goods?

A. Yeah.

The Court: It wouldn't be safe to say that would be the free American enterprise system, would it?

Mr. Mosser: I think it might.

Mr. Carney. I don't know. I don't have any more questions of this witness.

Redirect Examination

Q. (By Mr. Mosser): Mr. Apostolatos, was it

(Testimony of Alexandros Apostolatos.)

a Liberian Consul that witnessed the signing of the Articles when you signed them?

A. Oh, yes. [50]

Q. Was it a representative of the Greek union that was aboard the vessel in Germany that talked to you there? A. Yes; there was one.

Q. Do you know how your wage scales—they are considerably below United States wage scales, aren't they? A. Oh, yes; they are below.

Q. Do you know how they compare with other foreign countries?

A. Well, I think that the wages, they have something to do with the cost of living of every country. Well, for our country I think our wages, they are pretty good. But, comparing with foreign countries like, let's say, English or Italians, they are higher.

Q. The Greek wage scales are generally higher than British or Italian? A. Italian or—

Q. Lower than United States or Canada?

A. Or Canada is right.

Q. But the amount of money you're earning as a Greek seaman aboard this vessel, is that a pretty good wage for a Greek citizen to make?

A. Oh, yes; they are.

Q. One or two points that I missed. The owner of the vessel, is that Fianza Company?

A. *Compania Naviera*.

Q. Do you know what country that company is incorporated in? [51]

A. Panama, I suppose.

Q. Panamanian corporation. And the vessel is

(Testimony of Alexandros Apostolatos.)

here on a specific charter to carry this cargo of barley for Frachten Treuhand, a German company, is that correct?

A. Well, I don't know about this.

Q. You don't know that?

No more questions.

Recross Examination

Q. (By Mr. Carney): Let me ask you, on your previous voyage just before you came to Portland, where had the vessel been?

A. To Hong Kong.

Q. Were you taking some cargo to Hong Kong?

A. Yeah.

Q. What cargo was that?

A. We took fertilizers.

Q. Fertilizers? A. Yeah.

Q. From what port did you take them?

A. Antwerp, Belgium.

Q. From where? A. Antwerp, Belgium.

Q. As I understand it, your ship has a Liberian flag, it has Liberian Articles on it? [52]

A. (Witness nods head.)

Q. The rate of pay in the union agreement is Greek? A. Yeah.

Q. And the ownership of the ship is a Panamanian corporation? A. Yeah.

Q. Where do you live? Do you live in Greece?

A. Yeah.

Q. Do most of the crew members live in Greece?

A. Yes; all of them.

(Testimony of Alexandros Apostolatos.)

Mr. Carney: I have no further questions.

The Court: How many crewmen do you have aboard?

The Witness: Now we have thirty.

Mr. Carney: Thirty?

The Court: Thirty. Were all these crewmen members of the crew at Rotterdam when you signed your present Articles?

The Witness: Oh, yes; they were there.

The Court: And you had been sailing under prior Articles at that time?

The Witness: Yeah.

The Court: Where did you, and, so far as you know, the other members of the crew board this vessel for the first time?

The Witness: Well, you see, they didn't join the ship all together. Some of them for six months.

The Court: I understand. [53]

The Witness: Some of them before one year. But I could say the most of the time was Belgian.

The Court: Well, am I wrong, it is my understanding that it is the policy of some of the countries in Europe and, particularly, your country of Greece—

The Witness: Yeah.

The Court: —that you will recruit a crew in Greece and then transport them by rail across Europe to join a vessel at some given port, whether it be Marseille, Antwerp, Rotterdam, or wherever it is.

The Witness: Yes.

(Testimony of Alexandros Apostolatos.)

The Court: Where were you recruited for your berth on this vessel?

The Witness: Where?

The Court: Where?

The Witness: Antwerp. Oh. You mean—you mean the last time?

The Court: Yes.

The Witness: Where myself joined the ship? In Antwerp.

The Court: Well, I understand that. Now, were you without a berth—you understand what I mean?

The Witness: Yes.

The Court: —in Antwerp and just went to sign up on this vessel, or had you been on some other vessel before you joined? [54]

The Witness: Oh, I had been on another vessel before.

The Court: And you left your prior berth in Antwerp and then joined up with this—

The Witness: No; in Rotterdam.

The Court: I beg your pardon. Rotterdam. Now I understand. So far as the number of crew that you may know of, where were they recruited to join the ship?

The Witness: Oh, I don't know.

The Court: You don't know?

The Witness: I couldn't tell you.

The Court: All right.

Does plaintiff have any questions in line with the Court's questioning?

Mr. Mosser: No, your Honor.

(Testimony of Alexandros Apostolatos.)

The Court: Defendant?

Mr. Carney: No other questions.

The Court: That is all, sir. You may step down.

(Witness excused.)

Mr. Mosser: Now I will call Captain Michael Karras. [55]

MICHAEL KARRAS

produced as a witness in behalf of the Plaintiffs, being first duly sworn by the Clerk, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mosser): Mr. Karras, are you the Captain of the Capetan Yemelos? A. Yes.

Q. And that is a Liberian flag vessel?

A. Yes.

Q. Do you know how long it's been a Liberian flag vessel? A. How many years?

Q. Yes. A. Five, six years.

Q. Do you know where the vessel was built?

A. In Japan.

Q. It was built in Japan? A. Yes.

Q. Has it been a Liberian vessel since it was built or was it under some other flag before it became a Liberian vessel, or do you know? Do you understand my question? A. No.

Q. Has the vessel Capetan Yemelos always been a Liberian flag vessel since it was built?

A. Yes.

Q. Or was it under any other flag? [56]

A. No; all the time with the Liberian flag.

(Testimony of Michael Karras.)

Q. It was built in Japan?

A. (Witness nods head.)

Q. What is your tonnage, Captain?

A. 14,557 dead weight.

Q. That's your dead-weight tonnage. You are here to load a cargo of barley, is that correct?

A. Yes.

Q. Is there a voyage charter for the vessel in connection with that cargo?

A. Voyage charter?

Q. The German company, Frachten Treuhand, are they the charterers? A. Yes.

Q. Your crew are all of Greek nationality or extraction, is that correct?

A. Twenty-nine Greeks and one English.

Q. One English. Is he a radioman?

A. Yes.

Q. The wage scales aboard your vessel are in accordance with a Greek scale, is that correct?

A. Yes.

Q. Has anyone made any demands on you since you have been in this port in connection with the wages or working conditions aboard your ship?

A. No. [57]

Q. Nobody has come to you and said, "We want to represent your crew"? A. No.

Q. "Or negotiate a new agreement for them"?

A. No.

Mr. Mosser: I have no further questions.

The Court: Cross examine.

(Testimony of Michael Karras.)

Cross Examination

Q. (By Mr. Carney): Your ship is only a few years old—it's a new ship, isn't it?

A. Two years old.

Q. Built in 1956? A. March.

Q. Beg your pardon? A. In March.

Q. In March of 1956. Have you been aboard the ship since that time? A. No.

Q. How long have you been on?

A. Two months ago.

Q. Only two months ago? A. Yeah. [58]

Q. Were you ever on it before that?

A. Another ship.

Q. Pardon? A. In other ship.

Q. You were on other ships? A. Yes.

Q. Two months ago is the first time you were ever on this particular ship? A. Yes.

Q. Are you familiar with the various places where this ship has been before you got on there?

A. I do not—

Q. Do you know what voyages?

A. Japan, Canada, India; everywhere.

Q. It's a tramp ship that carries cargo under charter? A. Yes.

Q. There is a number of American ships also, aren't there, that are tramp vessels that carry cargoes under charters? A. Yes.

Q. You have observed them in your experiences? You have seen American ships? A. Yes.

Q. That are tramp ships also? A. Yes.

(Testimony of Michael Karras.)

Q. American ships carry the same type of cargo that your ship carries, don't they? [59]

A. Yes; they——

Q. They carry it to ports in the Orient and to ports in Europe? A. Yes.

Q. From the United States? A. Yes.

Q. Now, as I understand, there is no Liberian crew members aboard your ship, is that right?

A. Yes.

Q. And the company that owns the ship is a company that is registered in Panama?

A. Yes.

Q. Do you know who owns that corporation?

A. All I know is that the operator is in England.

Q. You know that the operator is in England?

A. Yeah.

Q. Do you know the names of the people that own the corporation?

A. I don't know the names of it. Only the title of the corporation.

Q. You only know what?

A. The name of the operators.

Q. What is the name of it?

A. A. Lucey. [60]

Q. Pardon? A. A. Lucey.

Q. Is that an English company?

A. No; Greek.

Q. A Greek company?

A. The operators, they're Greek but they got English and Greek on the side.

Q. I'm sorry. I didn't understand you.

(Testimony of Michael Karras.)

Mr. Mosser: I think the fact is, Mr. Carney, if it would clear it up for you, you can question him further on it, that the Greek citizens control A. Lucey which is a London concern of English incorporation which is operating the vessel. But the ownership of the vessel is under this Panamanian corporation.

Q. (By Mr. Carney): Well, I would like to get this straight because I think these things are at the very crux of it. Starting back, the ship itself is registered in the Port of Monrovia, Liberia; is that correct?

A. Yes.

Q. It carries a Liberian flag?

A. Yes.

Q. The ship is owned by a corporation?

A. In Panama.

Q. Which is in Panama?

A. Yes. [61]

Q. Now, the ship is operated by—that word—Lucey, or whatever it is?

A. Yes.

Q. In England?

A. Yes.

Q. Is that correct?

A. Yes.

Q. The company in England is composed mostly of Greek people?

A. Yes.

Q. Is that correct?

A. Yeah.

Q. Those Greek people, some live in England and some live some place else?

A. Yeah.

Q. Is that correct?

A. Yes.

Q. They are all not necessarily Greek citizens, do you understand what I mean?

A. Yeah.

Q. In other words, they are Greek nationality but they live in England, some of them?

A. Yeah.

(Testimony of Michael Karras.)

Q. So, do you know who are the owners of this Panamanian corporation? A. No. [62]

Q. You do not know that?

A. (Witness shakes head.)

Q. You are not sure whether or not it is these people in England that actually own the corporation? A. (Witness shakes head.)

Q. Do you know whether or not American citizens have any money in that corporation in Panama? A. I don't.

Q. As far as you know that could be possible, couldn't it? A. (Witness shakes head.)

Q. Well, maybe you don't understand my question. It would be possible, wouldn't it, for American citizens to have some money and investment in this Panamanian corporation?

A. We don't know because we don't know the persons.

Q. You are not told?

A. I am not told. They don't know the names.

Q. In other words——

A. We know only the title of the company. That we know.

Q. I see. You are not told as master of the vessel who the people are that own the vessel?

A. No.

Q. All that you know is it's a Panamanian company? A. Yes.

Q. And you know that there is a company in England that acts as agent or operator? [63]

A. Agents, yes.

(Testimony of Michael Karras.)

Q. And they give you your instructions where you're to go and where you're to pick up your cargo? A. Yes.

Q. They give you instructions with respect to the hiring of crews? A. Yes.

Q. And with respect to what wage scale you will pay? A. Yes.

Q. They tell you all of that? A. Yes.

Q. But you do not know who are the people that actually own the ship? A. No.

Mr. Carney: We have no further questions.

Mr. Mosser: That's all.

The Court: Just so that I may understand counsel's position about the matter, we can have an American vessel plying intercoastal; that is, the Atlantic and the Pacific trade, up and down, and she might have various agents; the Port of Portland, Port of San Francisco, San Pedro—up and down the Atlantic Coast who would have charge of finding cargo for her in any one of the given ports and would be the agent representing the owners whenever that vessel was in at their given port. Now, are you making the distinction between [64] these English operators and that type of an agent?

Mr. Carney: Yes. There is a distinction, your Honor. I think the type of an agent that the Court described is most often called a husbanding agent.

The Court: Yes.

Mr. Carney: That is, it is an agency which takes care of provisioning the ship and the other

(Testimony of Michael Karras.)

details that are needed when a ship reaches various ports.

The Court: Taking care of the crew problems that arise.

Mr. Carney: Wages and furnishing funds to the ship and furnishing it with fuel, and things like that, that it needs. Those agents are called husbanding agents, I believe. But those agents very, very rarely have anything to do with the charters for the ship or directing the ship where it will go.

That is usually centralized in one company which is the operating company for the ship.

Now, the questions that I was asking him were not with respect to husbanding agents, because they probably have some American company here in Portland. I don't know which one: William Stein & Company; International Shipping Company. Some company here in Portland to act as their husbanding agent when the ship comes in here to take care of the details that are needed to be taken care of ashore while the ship is here. But all these ships that are operated, if it is an American company, the company itself will direct the ships as to where [65] they will go and as to their charters and as to their crew and things like that.

But this ship is a Panamanian corporation and, as I understand from his testimony, that Panamanian corporation itself does not do any of the operating of the ship but have delegated that to one particular company in London to find charters for it and to do the general operating of the ship.

(Testimony of Michael Karras.)

The Court: I understand your position about it.

Mr. Carney: So, the thing that I was inquiring of him was, I am trying to find out—which we can never find out in these cases—is who owns the ship, who are the actual people. Are they American citizens or are they English citizens? Are they Greek citizens? He doesn't know who owns the ship except that some people who own stock in a Panamanian corporation own the ship and they have delegated the operation of it to another company in England.

The Court: Well, this matter has been stewing for awhile. As a matter of inquiry to the defendants, have you made any inquiry of the agency in charge of the corporation in Panama as to whether or not you could ascertain the stockholders, the management, of the Panamanian corporation, who is the owner of the vessel?

Mr. Carney: We haven't had time to do it in this case.

The Court: I see.

Mr. Carney: I have not made an inquiry in other case. [66] So I don't know whether it would be possible or not.

The Court: Well, I don't know either. I just made the inquiry. I didn't mean to interrupt.

Have you concluded?

Mr. Carney: I had completed my questioning.

The Court: Anything further?

Mr. Mosser: Nothing further.

The Court: That is all, sir. You may step down.

(Witness excused.)

Mr. Mosser: I think that completes the plaintiffs' prima facie case, your Honor.

The Court: Very well.

Mr. Carney: Your Honor, I notice it is close to the noon hour. I would like to argue with respect to the sufficiency of his prima facie case.

Now, if you would like us to continue we can argue now. Perhaps the Court, during the——

The Court: Well, don't you think, Mr. Carney, that we are going to get a more satisfactory result about the matter if we hear what the evidence is?

Mr. Carney: Well, yes. We can go ahead and put on our——

The Court: For the Court now at the state of this evidence—I have to accept it in its full light, giving it all the inferences that are involved. It appears from the [67] evidence now before the Court, giving the plaintiffs' case the benefit of all the inferences, and assuming it to be true, as we have to, if an attack is made at this time that this is a completely foreign-owned and operated vessel. Now, if your position be otherwise I think your record in this matter will be much better fortified—and it is exactly what happened in the New York case—I think that you ought to put on your position.

Mr. Carney: Well, yes. We are prepared to do that. Do you want——

The Court: But, it is right at noon.

Mr. Carney: Would the Court like me to leave with you during the noon hour the opinion from New York?

The Court: Well, I was in telephone contact with New York yesterday and I know pretty generally Judge Bryan's theories as they are involved. But I am most grateful to have his full oral opinion and I would like to have it at a convenient time.

Now, do you wish to keep it until you finish your case?

Mr. Carney: No. You may have it now.

Mr. Mosser: I haven't yet been able to get a copy of it. If your Honor is going to use it during the noon hour I wouldn't think of taking it. But if you are not going to use it I would be glad to take it to my office and photostat it [68] so that we may all three have copies of it. I am sure it could be done in about 45 minutes.

The Court: Well, I don't propose to look at it during the lunch hour because I want to have the benefit of the other position under my belt before I begin to consider this. If you would like to take it and photostat it I think we will all be obliged to you.

I talked to Judge Bryan about the matter and he said that it was an oral opinion and he had not reduced it to final writing and he didn't know if he ever would get to it because he was involved in the American Airlines strike.

Mr. Carney: He made some comments on that.

The Court: But say 1:45. [69]

(At 12:00 o'clock noon Court adjourned.)

Afternoon Session

(At 1:45 p.m., pursuant to noon adjournment, Court reconvened.)

The Court: Just for the sake of the record, may I ask you, Mr. Mosser, have photostatic copies of Judge Bryan's opinion been supplied?

Mr. Mosser: They have. I have given one to counsel and I have one now.

The Court: Let the record so show.

Mr. Mosser: If the Court please, I am going to ask leave to make one amendment in our complaint and to put on one witness in support of the allegation. It would be on Page 7 in Paragraph XXIII relating to damages that the vessel is suffering. There is a sentence in there that as plaintiff Fianza Company and Naviera S. A. is suffering damage while such picketing continues in an amount in excess of fifteen hundred dollars per day. I want to insert the words "loss of use." And then in addition and as a result of said vessel's inability to load and demand having been made that it move from its berth at Irving—said Irving Dock at 11:00 a.m. December 1, 1958, and plaintiffs' inability to move the vessel as a result of said picketing activity, plaintiff has become liable under the tariff of said Irving Dock for damages at the rate of one hundred dollars per hour from the [70] time when said move was demanded; and that the prayer for relief would then run the damages up to fifteen hundred plus one hundred dollars an hour from 11:00 a.m.—fifteen hundred dollars a day plus one

hundred dollars an hour for twenty-four hundred a day from 11:00 a.m.—

The Court: Well, that shouldn't be a matter of surprise to any party. You may make the amendment. I would suggest that you draw that in the form of a flyleaf that may be attached to Page 7.

Mr. Mosser: Thank you, your Honor. [71]

If I may reopen I would call Captain Jensen as a witness at this time.

JOHN JENSEN

produced as a witness in behalf of the Plaintiffs, being first duly sworn by the Clerk, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mosser): Captain Jensen, with whom are you employed?

A. I am employed by International Shipping Company as Operation Manager.

Q. Is International Shipping Company serving in any capacity in relation to the SS Capetan Yemelos?

A. We are acting as owners, protective agents.

Q. Is that ship husbanding at this port?

A. It's being husbanded by our company.

Mr. Mosser: I will ask this be marked Plaintiffs' Exhibit 5 and these two pages Plaintiffs' Exhibit 6, Pages 1 and 2.

(At this point a document entitled "Agreement" was marked for identification as Plaintiffs' Exhibit 5; a document purported to be an

(Testimony of John Jensen.)

extract of tariff, Pages 1 and 2 thereof, were marked for identification as Plaintiffs' Exhibits 6-A and 6-B, respectively.)

Q. (By Mr. Mosser): I will ask you, Captain, if you can identify Plaintiffs' Exhibit 5, which is a letter. [72] A. I do.

Q. What is that?

A. That is pursuant to our agreement referring to letter received from Balfour Guthrie stipulating that we are liable under Item 24 in the tariff letter. "Vessels which will incur a penalty"——

Mr. Carney: I would say, your Honor, that it speaks for itself.

The Court: Yes. It has not been admitted into evidence. Do you offer it?

Mr. Mosser: I will offer it.

The Court: Any objection?

Mr. Carney: We have no objection to the letter that's been identified by the witness as having been received.

The Court: It will be received.

(At this point the document entitled "Agreement," having been previously marked for identification, was received in evidence as Plaintiffs' Exhibit 5.)

The Court: Now, either party may read it into the record.

Mr. Mosser: Is it your practice, your Honor, to have documents read into the record?

The Court: Whatever you wish.

Mr. Mosser: If it is in the record after being

(Testimony of John Jensen.)

offered in evidence I don't particularly wish to read it at this time. [73]

The Court: Very well. It is before the Court.

Q. (By Mr. Mosser): Can you identify the second exhibit there which has two pages?

A. Marked 6-A, Page 8 and 9?

Q. Yes. A. I do.

Q. What is that?

A. This is an extract of the tariff, Balfour Guthrie Elevator Tariff. This is a photostatic copy of the tariff we have in our office.

Mr. Mosser: I will offer it.

The Court: Any objection?

Mr. Carney: Yes. I will object to it, your Honor, because it is only a partial—couple of pages of the tariff and it is not the entire tariff or the entire document. We feel, your Honor, that the entire document should be in evidence because there is probably other matters that would refer to this.

The Court: Well, we can't take things out of context. Your objection will be sustained.

Mr. Mosser: May I have the exhibit, please?

The Court: Now, as I understand, the whole issue of this matter that you are attempting to put into evidence now is the hourly rate charged by the——

Mr. Mosser: There is a tariff provision, your Honor, [74] specifying that if the vessel fails to move when demand is made the vessel will be assessed a penalty of a hundred dollars an hour from the time of notice to vacate until berth is vacated.

(Testimony of John Jensen.)

The Court: All right. Now, I understand your position. Do you accept that position or do you wish proof?

Mr. Carney: We wish proof on it, your Honor.

The Court: All right, you may have it.

Mr. Mosser: Your Honor, subject to the ruling which you have just made, I would like your Honor to examine this because the Item 24 of the tariff, it seems to me, is complete in itself. That complete item of the tariff is here and has no cross references to other items of the tariff.

Mr. Carney: We don't know until we see the whole tariff, your Honor, whether there are other parts of the tariff which would cross-reference back to this.

The Court: Yes. I agree with you. It may be taken out of context or it may not, I do not know. But it is just too easy to get the whole tariff here.

Mr. Mosser: Very well, your Honor.

Q. Captain Jensen, in your business at International Shipping Company do you have anything to do with the charters of vessels of this type, tramp steamers?

A. Yes. We do quite a bit of chartering cargo, boating and cargo booking. [75]

Q. Are you generally familiar with the prevailing rates of charter on vessels at this time?

A. Yes.

Q. I will specify that: of vessels of a dry cargo type such as the SS Capetan Yemelos?

(Testimony of John Jensen.)

A. Well, in the present market it is worth fifteen to two thousand dollars a day.

Q. Fifteen hundred to two thousand dollars a day? A. That's correct.

Mr. Mosser: No further questions.

The Court: Cross examine.

Cross Examination

Q. (By Mr. Carney): Does that charter rate vary from time to time?

A. Yes; depending on the market conditions, of course.

Q. The market condition is influenced by the number and types of ships which are available, is that right? A. That is correct.

The Court: Wouldn't our inquiry be as to the immediate time? I can understand that in one given year it might be different than another. But we are dealing with a specific time. Let's inquire as to the time that is involved.

Mr. Carney: Very well.

Q. Now, at the present time you gave the rate as being [76] approximately fifteen hundred dollars a day, as I understand it; is that right?

A. That's an approximate figure only.

Q. Now, in the recent past has that varied very much?

A. Oh, for three months—about three months ago the market went clear down to about four dollars and a half whereas now it's nine and a half.

(Testimony of John Jensen.)

Q. Per ton? That is expressed per ton? How much would that be per day?

A. We will put it a ship. It's barely breaking even. Say, worth about nine hundred dollars a day.

Q. I didn't quite understand your answer. In other words, a break-even point is around nine hundred dollars a day? A. That is correct.

Q. That a ship can earn?

A. That's per break even. Add operational costs and that type of thing.

Q. Now, depending on the different types of flags, the operational costs vary, don't they?

A. Well, for instance, an American ship, it will run about twenty-five hundred dollars a day.

Q. That is at the present time? A. Yes.

Q. That has been twenty-five hundred or two thousand, in that vicinity, for a year or two, would you say? [77]

A. No. In recent—since about January of 1958 till about October this year the market was the lowest in quite a few years since about '47 or '48.

Q. What would be the American rate in that period of time?

A. Commercial market or Government support?

Q. Well, in commercial market.

A. Commercial market, compare their freight for an American ship, runs about fourteen to fifteen dollars a ton. If it is a foreign vessel it will run about eight or nine dollars a ton.

Q. In other words, American is fourteen or fif-

(Testimony of John Jensen.)

teen dollars a ton and the foreign is eight or nine dollars a ton?

A. That's only approximate figures, of course.

Q. But the foreign ship, then, in all cases is able to carry cargo at a lesser cost than the American ships?

A. Any foreign flag can carry for less than it costs on an American ship. That's an established fact.

Mr. Carney: That is all.

The Court: We have had some testimony in the case, sir, concerning the Articles that were signed by the crew of this vessel that is involved; that the Articles provided the wage scale that has been agreed upon between representatives of the seamen in Greece, and there was testimony to the effect—whether it be true or not I don't know—that that wage scale was higher than the crewmen of an Italian or a British ship [78] flying those respective flags. Now, have you had dealings with vessels coming into this port flying a British flag?

The Witness: Yes; quite a few, sir.

The Court: What is the cost per day on a British ship?

The Witness: Cost per day for breaking-even point, operational costs, or charter costs?

The Court: Well, you gave the—I will have to ask for your advice about that. You gave the expression that a nine hundred dollar figure was a

(Testimony of John Jensen.)

break-even point in the vessel that you talked about in your testimony.

The Witness: In a British ship of the same type it would run perhaps slightly less, about seven to eight hundred dollars a day operational costs.

The Court: How about Italian?

The Witness: Italian are somewhat lower than that. They would run about six hundred and fifty a day.

Mr. Carney: I would like to inquire a little further.

Q. You said that International Shipping Company with whom you are employed are acting as agents for the owners of this vessel.

A. We are acting as owners' protecting agents through the operators.

Q. Do you know who the owners are?

A. I don't personally know. I haven't really checked up as far as the owner. I just know the registered owner. [79]

Q. Do you know who it was that engaged your company to represent this ship as agent?

A. Through their agency in New York.

Q. In other words, you received your engagement or employment through an agency in New York?

A. Every steamship company has an agent all over the world which is handling their particular interests. Then for various small ports, then, they appoint other agents in that area.

Q. So your company here in Portland received

(Testimony of John Jensen.)

its appointment from another agent in New York?

A. Wire New York from London.

Q. In other words, there was a wire from London to New York that gave the authority to engage you in Portland? A. That is correct.

Q. Is that right?

A. That's the way they usually handle it.

Q. Do you know the names of those various agencies?

A. No; I do not. I'd have to confer with the lists on the various agencies for that.

Q. Do you know who actually owns this ship?

A. Oh, other than the registered owner I do not know.

Q. By "the registered owner" you mean the corporation in Panama?

A. Yes. It's a Liberian flag.

Q. It's a Liberian flag and a corporation in Panama is listed as the owner? [80]

A. Correct.

Q. But outside of that, you do not know who actually owns the ship? A. No, I do not.

Mr. Carney: We have no further questions.

The Court: Any redirect?

Mr. Mosser: No further questions.

The Court: That is all, sir. You may step down.

(Witness excused.)

Mr. Mosser: Subject to bringing up the full tariff, your Honor, that would conclude the plaintiffs' case.

The Court: Very well. You may have that leave.

Mr. Carney: Your Honor, in the noon hour we considered seriously the remarks the Court made at the close of the plaintiffs' case with respect to the, we might call it, the status or the ownership of this vessel. We have attempted during the noon hour to see what we could find with respect to that ownership and as we understand some of the unions in New York try to keep a record of who actually owns some of these ships.

We are trying to determine that. We are also going to, although we haven't started to yet, get the fact of the matter if we can from the Government of Panama.

Now, it is only that testimony that we would care [81] to offer in this case because, I think, the evidence in the case with respect to the situation of various American unions with respect to their protests and whatnot, and with respect to the conditions on American ships and conditions on these other flagships have already come into evidence sufficiently by the witnesses who have already appeared.

We could put other witnesses on who might bring it out more clearly or might supplement it, but I think it would be pretty much cumulative.

But if the Court is concerned on that point, we would like leave and opportunity to produce that evidence.

The Court: Well, Mr. Carney, we have to be realistic about this matter. One of the defendants who was called as an adverse party said that he knew about this matter; he read about it in The

Oregonian; that he knew that there was a national movement for a four-day demonstration against these vessels and their practices. I am frank to tell you that I am not disturbed by your lack of preparation.

Mr. Carney: Well, it isn't a matter of lack of preparation, your Honor. The plaintiffs are the parties here who are seeking the extraordinary remedy of a court by an injunction.

The Court: Well, now, all I can ask you is—they put on a prima facie case. They have established the fact that there were individuals who carried—not unlike a picket line, [82] but being distinguished—as claiming unfair practices; that there was a matter of protest. They have also established that contemporaneously with the appearance of those individuals that workage of this vessel stopped.

Now, are you content to leave the record in that state of affairs, or do you wish to go forward and produce any evidence?

Mr. Carney: Well, I think we will call one witness on it.

The Court: All right.

Mr. Carney: We will call Mr. Coleman. [83]

ART COLEMAN

produced as a witness in behalf of the Defendants, being first duly sworn by the Clerk, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Carney): Mr. Coleman, what is your address?

(Testimony of Art Coleman.)

A. My address is Box 9, Beaver Creek, Oregon.

Q. What is your occupation?

A. I am the Port Agent for the Marine Firemen's Union.

Q. The Marine Firemen's Union is affiliated with what other union?

A. We are affiliated with the SIU.

Q. That is the Seafarers' International Union?

A. Yes.

Q. Now, the people who are in your union, the Marine Firemen's Union, will you tell us in what employment they are engaged?

A. There is quite a few of them. The electricians, reefer engineers, deck engineers, firemen, water tenders, oilers, wipers—I will have to look it up.

Q. Well, the general engine room department employees?

A. The engine room, that's correct. The unlicensed personnel.

Q. On what type of ships are they employed?

A. They're employed on all types of ships: C-2, C-3, Victories, Liberty ships, steam, Diesel. [84]

Q. Your union represents employees mostly engaged on ships on the West Coast of the United States, is that right?

A. We have ships that run intercoastal, into the East Coast. We have ships that run foreign but they mostly operate out of the West Coast.

Q. Now, have your members been employed and

(Testimony of Art Coleman.)

are they presently employed aboard vessels which are engaged in the tramp trade?

A. Yes. There is only one company now that I know of in the Port of Portland that has—operates vessels in the tramp trade, and that is the West Coast Steamship Company.

Q. In the recent years past have there been more than one company engaged in those operations?

A. Yes; considerably amount more. It was up until about a year ago that they have been lots of ships running on the tramp trade. But as of a year ago there is only one company that I know of now and that is the West Coast Steamship Company.

Q. What principal cargo is carried out of the Port of Portland by tramp vessels?

A. Oh, they haul grain, coal, scrap iron, and if they get a chance they carry general cargo.

Q. Now, within the last——

The Court: Just as a matter of record and for pride of [85] our own area couldn't we say that we are the biggest dry port cargo on the Pacific Coast?

Mr. Carney: I think that's true, your Honor, and especially with respect to the carriage of grain.

Q. Now, have you observed during the past year with respect to the carriage of such cargoes from the Port of Portland as to the flag of the vessels carrying those cargoes?

A. Oh, in the past there was a lot of ships com-

(Testimony of Art Coleman.)

ing in here flying the American flag, but in the last year it is mostly Panamanian, Honduran, Costa Rican, Japanese, and there might be a little of everything but the American flag. The American flag—there is a ship—the Merchant Marine—the United States Merchant Marine is dwindling very, very fast.

Q. Now, with respect to employment and through your union do you have a hiring hall?

A. We do.

Q. Is your work connected with that?

A. It is.

Q. What has the condition been with respect to opportunities for employment during the past year or so as compared to previous years?

A. During the past year it has been very, very slack. In fact, our membership—the employment has been so slack with the Firemen's Union that in the past they voted to leave a man stay on the ship for one year and then he was to get off [86] and rotate the work with somebody else.

Since that time work has got so slack that now they have lowered that to six months on the ship and to rotate the work. The man stays on for six months and then gets off to make more jobs for the rest of the fellows.

Q. Now, have you—

A. Now we have it on our ballot—they are voting on it at the present time—to make it seven months instead of six months for the benefit of the old-timers that has been in the industry for

(Testimony of Art Coleman.)

years on account of their pension. They have to have twenty years in the last thirty to apply—to be eligible for pension.

Q. Have you yourself been aboard or have any knowledge of the conditions on these Liberian flag and Panamanian flag and other flagships that are hauling cargoes of grain from the Port of Portland? A. No.

Q. I mean, aboard them, not with respect to working there but to see what their working conditions are?

A. Actually being aboard the ship?

Q. Yes. A. No.

Q. Have you some information with respect to what the conditions are on those ships?

Mr. Mosser: I would object to information unless it is identified as to the source and relative—

Q. (By Mr. Carney): Well, I will ask you whether or not the Liberian flagships are subjected to the Coast Guard inspection that the American ships are subjected to.

A. Truthfully, I couldn't say yes or no. I don't think they are.

Q. During this week have you had information or have you known of a protest that is being carried out with respect to Liberian flags and other such flagships in this port? A. I do.

Q. You yourself—you have not made a protest on the docks yourself, have you?

A. No; nor have I asked anyone else to go down to the docks and protest. It's all voluntary.

(Testimony of Art Coleman.)

Q. Voluntary? A. If I may say——

Q. Have unions that your union is affiliated with passed a resolution with respect to this protest that you know of?

A. The International Transport Workers did.

Q. The International Transport Workers Federation passed such a resolution?

A. That's right.

Q. In that resolution did they determine that they would make an external protest with respect to the ships during the period of December 1, 1958, for a period of four days? [88]

A. That is correct.

Q. Is it your information that the banners which are being displayed at these vessels are part of that protest? A. It is.

Q. Does the protest concern the competition and variations in working conditions aboard those foreign flagships as compared with the conditions which you have under your union agreement?

A. That is the big part of the protest.

Q. Has your union or any union made any agreement or contact with the Longshoremen's Union with respect to refusing to go aboard ship where such protests are being carried out?

A. We have made no contact with any other union outside of the Maritime group about going aboard the ships or working the ships. We are not down there to protest the working of the ships or to stop workage in any way or form. It is more or less a protest to let the citizens of the United States

(Testimony of Art Coleman.)

know what is going on on these—what we call—run-away flagships and breaking down our conditions.

Q. Is the International Longshoremen's Union, ILWU, an affiliate of the International Transport Federation? A. Not that I know of.

Q. Has it been your purpose in displaying these banners at the ship to prevent other people from working on the ship?

A. Absolutely not. [89]

Q. Well, maybe I have already said it, but what is the purpose of the displaying of these banners during this four-day period?

A. As United States citizens these fellows figure they are allowed to carry these banners and put out publicity and let the people know, the citizens of the United States, know what is going on aboard their ships and the difference in wages and the difference in conditions aboard their ships and ours and trying to bring us down to a lower standard of living.

Mr. Carney: No further questions.

Cross Examination

Q. (By Mr. Mosser): Mr. Coleman, you said you hadn't had any contact with any unions outside the Maritime group. There have been some conferences among the leaders of the Maritime—local Maritime Unions and Pacific Maritime Unions, have there not?

A. Oh, we talked. Why, certainly, we have our little caucuses and get-togethers. We have been having them for years.

(Testimony of Art Coleman.)

Q. Was there a meeting last Friday to determine action in relation to this boycott of such a group?

Mr. Carney: Are you referring to a meeting in Portland or some place else?

Mr. Mosser: Would you hand me Plaintiffs' Exhibit 4, [90] please? I just noticed in this issue of the Stewards News it said a number of West Coast unions are due to meet today to plan for the protest in this area.

Q. Do you know anything about such a meeting? This was published last Friday, November——

A. Is that a Portland paper, San Francisco?

The Court: Show the witness the paper so he may be advised.

The Witness: This was published in San Francisco.

Q. (By Mr. Mosser): There were no meetings here of that kind?

A. We always have meetings amongst our own departments, the SIU, the Marine Cooks and Stewards, the Sailors' Union of the Pacific, and the Firemen. We have been carrying on little meetings, our officials, for a number of years.

Q. Has this boycott been discussed at any such meeting? A. We——

Mr. Carney: What boycott?

The Witness: We have no—we have no——

Mr. Carney: Just a moment!

The Court: Just a moment!

Mr. Carney: We object to the form of the question as inserting a conclusion in the question.

(Testimony of Art Coleman.)

Mr. Mosser: I am using the language of their own union newspaper.

Q. But, I will say this action in carrying banners down at [91] the Irving Dock and the other docks around Portland, was that discussed at any such meeting?

A. For your information, this is not our — our paper here. This is the Stewards News. Ours is the Marine Firemen's.

Q. Yes, sir. I understand that. Now, my question is, was this action discussed by your little Maritime group of unions? A. We talked it over.

Q. Now, you say that the sole purpose of this action is to inform the American people concerning this? A. That is correct.

Q. Now, you want to inform the people in Portland here of it?

A. Not only in Portland, but all over the — all over the United States. In fact, it is international.

Q. How many people are there down on the Irving Dock? A. I don't know.

Q. Are there usually very many people down there?

A. I don't know. It's been several years since I have been down to the Irving Dock.

Q. Would you say that there are more or less people there than by Meier & Frank's corner on an average day? A. Probably is.

Q. More at the Irving Dock?

A. Probably more in Meier & Frank's, I say.

(Testimony of Art Coleman.)

Q. You are not giving out any publicity of this kind down by Meier & Frank, are you? [92]

A. I don't know. There may be. I don't know. I didn't put any up there, if that's what you're getting at. I see them—I see these pamphlets quite a ways uptown around Salmon Street. I did notice a few of them on the sidewalks and that.

Mr. Mosser: No further questions.

Redirect Examination

Q. (By Mr. Carney): Did you or anyone in any of the Maritime groups contact any towboat or tugboat operators with respect to moving of this vessel, the Capetan Yemelos?

Mr. Mosser: I will object.

The Court: Let me hear your objection.

Mr. Mosser: Mr. Carney's question was: "Did you or anybody in any of these groups." I don't mind him answering for himself but I don't see how he knows whether anybody in any of the groups—

The Court: Place the question so far as to his knowledge.

Q. (By Mr. Carney): So far as you know did you or any one of the other members of the Maritime Unions in Portland that you are associated with request or ask or in any way induce the tugboat operators not to handle the SS Capetan Yemelos?

A. I did not. And as far as I know none of the other—the groups did. I don't know what the gentleman's name is [93] there, but he asked me a

(Testimony of Art Coleman.)

question if we discussed this in our little meeting and I answered "Yes." And——

Mr. Carney: Just answer the question I asked you.

The Witness: Okeh.

Mr. Carney: I just wanted to get that cleared up with respect to the tugboat.

The Court: You see, the Court has a problem on its hands and wants to be advised as best it can. You stated that you discussed this problem as you described it being nationwide among your group. Was there any decision made as to what action you would take?

The Witness: We went so far as this: that we would let our membership know about it and we showed them our pamphlets, the pamphlets which were written, and the membership volunteered to go down there. We did not send them down there. We didn't ask them to go down there. But they took it on their own to go down there to wear these banners.

But, as far as asking any of them, we did not do that. We also advised them when they did go down there to not stop any truck drivers, freight trains, pilots, longshore or anybody else that wanted to work that ship.

The purpose of it was not to stop work.

The Court: Now, in asking members of the organization to do this volunteer work that many of us are asked to do in our daily lives, is there any

(Testimony of Art Coleman.)

retaliation made if an [94] individual does not do it?

The Witness: What do you mean, your Honor, "retaliation"?

The Court: Well, within the members of the union is there any fine levied?

The Witness: No, sir.

The Court: So your testimony is that if you asked somebody to voluntarily distribute these hand-bills and they said, "No, I won't have anything to do with it," that would be the end of it?

The Witness: That is correct.

The Court: Now, the next problem that the Court has to decide is for what reason has the ship stopped to be worked.

The Witness: I cannot answer that question. Honestly, I could not answer it. We did not ask nobody to stop work. We tried to keep nobody through our protest lines whatsoever.

The Court: Well, am I so naive as to believe that the fact that you made the protest had no effect upon other unions working the ship?

The Witness: Oh, I imagine it—it made a difference, because the ship was not worked. But I mean to say that we did not contact any other unions or anything like that and tell them not to work this ship.

The Court: Well, then, you as an individual member and an officer in one of these unions have no explanation to make as to why this ship has not been worked? [95]

(Testimony of Art Coleman.)

The Witness: No; I couldn't answer that question.

The Court: Thank you for your advice.

Mr. Carney: May I inquire along that line, your Honor, for a moment?

The Court: You may.

Q. (By Mr. Carney): Are the Longshoremen's Unions in Portland members of the Maritime group of unions that you spoke of earlier? A. No.

Q. You are not at all affiliated with the ILWU at all, are you? A. No.

Q. They are not a member of this ITF and didn't participate in any resolution?

A. (Witness shakes head.)

The Court: So that I may be further advised, do you know if there is any vessel in the port of either Vancouver, as we call it, or Port of Portland, Vancouver, Longview and Portland flying the British flag?

The Witness: Not that I know of.

The Court: Has there been recently?

The Witness: Not to my knowledge.

The Court: Or any vessel flying the Italian flag?

The Witness: We get what we call the shipping guide down there every morning and we go through that. We are more [96] particular and more concerned under the ships under our contract than we are in case a ship comes out and it pays off, or something like that, and they have got beefs on them with—

The Court: I understand that.

(Testimony of Art Coleman.)

The Witness: As a rule we don't pay too much attention. We go by the waterfront, or something like that, we notice all those ships in, but—there is ships in the harbor and we are never called down there to them. But what nationality they are, we don't—

The Court: How did you get knowledge that this particular vessel involved in this litigation was entering the port?

The Witness: I don't remember if that was one in the shipping guide or not. But after—after this protest came up then we started to watching more or less for these Panamanian, Honduran flags, Costa Rican, and so forth.

The Court: Thank you. Any further questions in view of the—

Mr. Mosser: No.

The Court: Mr. Carney, in view of the Court's questioning—

Mr. Carney: No, we have nothing more.

The Court: That is all. You may step down.

(Witness excused.) [97]

Mr. Carney: Could we have just a moment, please, to—

The Court: Yes, indeed you may.

Mr. Carney: We have no further testimony to offer.

Mr. Mosser: Your Honor, I have—

The Court: Redirect?

Mr. Mosser: I have the tariff here.

Would you stipulate that this is the tariff or do

you wish me to call Captain Jensen or another witness again to identify it?

Mr. Carney: I would like to have someone who knows something about it.

The Court: Call your witness.

Mr. Mosser: Captain Jensen.

The Court: Let's have it marked for identification, Mr. Price, while the witness is coming up.

(At this point a booklet entitled "Grain Tariff No. 6" was marked for identification as Plaintiffs' Exhibit 7.)

Mr. Carney: This is something I have in mind in looking, your Honor, and it may take me a minute or——

The Court: You certainly may take your time.

Mr. Carney: I am finished.

(At this point the Crier handed the booklet to the witness.) [98]

JOHN JENSEN

a witness produced in behalf of the Plaintiffs, having been previously duly sworn, was thereupon recalled and testified further as follows:

Direct Examination

Q. (By Mr. Mosser): Captain Jensen, I believe you have now been handed Plaintiffs' Exhibit 7. Can you identify that?

A. Yes; indeed. That's the tariff issued by the warehouse company which is Irving Dock.

Mr. Mosser: I will offer it and, particularly, Article 24 of the tariff, the relevant one.

(Testimony of John Jensen.)

Mr. Carney: I would like to ask him a couple of questions on voir dire.

The Court: Indeed you may on voir dire.

Examination

Q. (By Mr. Carney): This tariff is published by the warehouse company, is that correct?

A. It's called Interior Warehouse Company which is Irving Dock—is their property which is an elevator of the warehouse company.

Q. Is that a private company or is that a public dock? A. No; it's a private concern.

Mr. Carney: Now, I don't have the exhibit there that he [99] marked.

Mr. Mosser: Here it is.

Q. (By Mr. Carney): Now, this—as I remember, the Capetan Yemelos came into port on the 30th of November; is that right?

A. That's correct; arrived in Longview at Long Bell Dock.

Q. So, then, you received a letter on December 2nd with respect to the penalty charges under Item 24? A. That is correct.

Mr. Carney: I have no further questions with respect to the exhibit.

The Court: Is there any objection to the offer?

Mr. Carney: No, we have no objection.

The Court: It will be received with reference to the section that has been mentioned.

(At this point Plaintiffs' Exhibit 7, being a booklet entitled "Grain Tariff No. 6," Article

(Testimony of John Jensen.)

24 thereof, having been previously marked for identification, was received in evidence.)

Mr. Mosser: That's all I have.

Mr. Carney: I would like to examine a little further.

The Court: Cross examine.

Cross Examination

Q. (By Mr. Carney): Now, you have handled a number of ships that have been [100] berthed at the Irving Dock, haven't you? A. Yes, we have.

Q. Is this the first time that you have ever had Item 24 invoked by the company?

A. That is correct.

Q. The first time?

A. This is the first time, to my knowledge, in the past two years.

Q. Now, there are a number of provisions, or a couple of provisions in the tariff, aren't there, that the company—the dock company is not responsible with respect to the delay of a ship if there is a strike or a lack of work with respect to their employees or other employees on the dock?

A. I assume so. I haven't checked the tariff closely so I wouldn't care to state unless I know exactly what it says.

Q. But as you understand Item 24, that is a penalty provision?

A. That is correct; that any time a vessel don't move away from the berth after having been given instructions to do so, Section 24 provides the penalty for it.

(Testimony of John Jensen.)

Q. Even if the vessel is unable to move?

A. Regardless.

Q. But this is the first time that you have had it called to your attention in two years, is that right?

A. At this particular dock in the past two years, yes. [101]

Mr. Carney: I have no further questions.

Mr. Mosser: One——

The Court: So that I may be advised about it, during this period of time that you speak about have you ever had a vessel that was under your agency that was refused to be worked by the servicing people in the port?

The Witness: Have we had another——

The Court: At that dock.

The Witness: Not at that particular berth.

Mr. Mosser: That was the question I was going—referring to.

Mr. Carney: We have no further questions.

The Court: That is all, sir. You may step down.

(Witness excused.)

Mr. Carney: We have no further testimony.

The Court: Any redirect?

Mr. Mosser: No.

The Court: Well, now, what is counsels' desire about argument? Do you wish to be heard orally in the matter?

Mr. Carney: Well, yes, your Honor, we would like to be heard.

The Court: I will certainly hear you.

Mr. Carney: Do you wish to go ahead?

The Court: I think that what we will do in order to [102] collect our thoughts about the matter, we will take a short recess, fifteen minutes' time, and then counsel can go forward and advise the Court as to your respective theories about it. Whether or not I am able to resolve the matter this evening I will not say, but I will say that if not tonight, at 9:45 in the morning I will issue an order about it. And I wish to have the full advice that counsel can give me on it.

Mr. Carney: Would the Court, perhaps, rather—this has come on somewhat hurriedly. Would you rather that we, perhaps, come at 9:30 in the morning? Perhaps we could be better prepared with an argument and, perhaps, an authority.

The Court: I am confronted with this proposition. Judge Bryan in New York was confronted with an emergency matter that this protest was to start. If I recall, reading the accounts of it, he held court until 7:00 o'clock that night and the next morning he delivered orally the opinion of which you have the court reporter's stenographic report on. I think what we had better do is put our shoulder to the wheel today and resolve it if it be true that the testimony shows that this is a four-day protest.

Judge Bryan said in his opinion it may go longer. So I don't want the question to be moot. So I think what I had better do is hear counsel out today and if I am unable to reach a conclusion about it before the evening, I will at 9:45 in the morning. So let's

take a fifteen-minute recess [103] to collect ourselves and then go ahead.

(Recess taken.)

The Court: I will hear from the plaintiff.

Mr. Mosser: For your Honor's convenience I will use the lectern here.

The Court: Well, I haven't asked counsel to do it during this trial because I realized you had so many documents that you had to have.

Mr. Mosser: I think there are times when it is an advantage, but times when it is a disadvantage. But in addressing the Court I think that is one of the times when it has an advantage.

I would like first to dispose of the preliminary jurisdictional question that was raised by Mr. Carney. As I stated at the outset, I think the acts here may well fall within the Sherman Act, but I don't think we have to rely on that for jurisdiction because I think the complaint states a cause of action based on diversity jurisdiction and a common law conspiracy which could be unlawful at common law.

He raised the point that unions are unincorporated associations and have members of many states and even nations and that a union, such an unincorporated association has no citizenship separate from its members.

Now, that, I think, is a correct statement of the law, your Honor. But in this proceeding in a class action [104] it's long been held in Federal Court that the only citizenship which must be looked to is that of the individual defendants who are named as representatives of the other members.

I would like to read just briefly from *Ketcher vs. Sheet Metal Workers*, 115 Fed. Supp., 802. At Page 811—it is 802. At 811 it says:

“It should be further pointed out that in Count Two of the complaint the plaintiffs are not suing the International Union as such; rather, they are attempting to sue the members of said Union by means of a class action under Rule 23 of the Federal Rules of Civil Procedure; the reason for the plaintiffs’ utilization of this device is that in a class action in determining diversity the citizenship of the member or members of the class made a party or parties to the suit governs; the citizenship of other members of the class is ignored.”

Then they cite from 2 *Barron & Holtzoff*, Section 569, Page 176.

“Hence, if the plaintiffs can maintain their class suit against the members of the International Union by suing”—a man’s name —“Eilmes, a citizen of Washington, as a member of the class, the jurisdictional obstacle created by the fact [105] that many members of said Union are citizens of Arkansas will have been overcome.”

And, there are many more cases that I could cite.

The Court: Well, I am satisfied on that point.

Mr. Mosser: As far as the jurisdictional amount, I think even under our original complaint before amendment we alleged fifteen hundred dollars a day and continuing damages. Well, I don’t think the jurisdictional ten thousand dollar amount requires a plaintiff to wait seven days where he is being damaged fifteen hundred dollars a day for seeking an

injunction. The fact is that the damages would build up.

Now, they may claim that the boycott would end in four days, but there is no proof of that. We don't know what will happen in four days. In any event, under the amended complaint stating a substantial larger damages I think there is no question as to the jurisdictional amount.

The Court: Go right ahead.

Mr. Mosser: I think we have proved the allegation of our complaint and the main question is whether they state a cause of action or whether the Court has been deprived of the jurisdiction because of the labor statutes of the United States.

Certainly we showed that this is a Liberian flag vessel with a Greek crew except for one member; that the ownership is a Panamanian corporation; that the operators [106] of it are a London concern controlled by Greeks. I might interject here in line with your Honor's question on agency that it has been my experience that many of the European nations, the British, the Greeks, the Norwegians, particularly, that I have had contact with have a separate company for management and operation of their vessels from the company which technically owns the vessel.

They pool a number of vessels together in one operating company even though the ownership may be separate. It is just a common device that is used there.

Now, I think the fact that this is completely foreign is one fact which distinguishes it from the case

that was decided in New York. I noticed in hastily scanning—and I don't pretend to be thoroughly familiar with this opinion yet—but in scanning Judge Bryan's opinion, on Page 23 he states:

“It is a conceded fact that the plaintiff corporations are owned and controlled by major American industrial companies.”

That is quite likely, as I said earlier. If 42 per cent of the so-called flag of necessities or haven flagships are ultimately American-controlled, that still leaves 58 per cent foreign-controlled.

I think we have proved that the pickets showed up at the dock when the vessel arrived to load this cargo and [107] that the ship has been unable to load or even to move from its berth since then.

Now, there was some talk here that this was not intended to be a picket line, it wasn't intended to stop work on those vessels. I have heard that in almost every labor case I have been in, I think. They are just talking. They don't mean to do any harm at all. But I think if we look just at Plaintiffs' Exhibit 4, which is admitted to be the official newspaper of the Marine Cooks and Stewards, we find that they have this:

“Message to all waterfront workers”—on the front page——

“on the Panlibhonceo Boycott. Arrangements for boycott are now being made. Your union will tell you how you can play your part.”

Then it winds up:

“Time for action. Panlibhonce must be checked before it is too late, before your standards are damaged beyond repair. These ships without acceptable agreements are ‘black.’ ‘Black’ ships mean less in your pockets in the long run. Remember that when your union calls for your support.

The details of the boycott will be given to you in good time. [108]

When the time comes for action, act quickly and act together.”

The fact that they placed their pickets down at the Irving Dock where people having business with this ship would be bound to go instead of in the places where they could get the attention of the maximum number of people if they were merely interested in publicity — I think the Court certainly realizes the fact of modern-day labor union techniques and the effect—as the witness himself admitted, this probably did have an effect on the workers as to whether they would go and work on this ship.

The Court: Of course, I am disturbed a little bit because of the fact that we do have before us this very learned opinion by Judge Bryan. In reading his account of the issues that are involved, which seem to be entirely different from the issues that we have here, he says, “The defendants concede that they intended to carry out their plans.” And that was this four-day International plan of action to be carried out in some 62 countries throughout the world. “The defendants concede that they intend to carry out their plans:

- (1) By picketing the plaintiffs’ ships and induc-

ing other organizations to picket the ships while they are in any port in the United States;

(2) By inducing their members, who are [109] employees of tugboats and other craft which service plaintiffs' ships, not to aid in the docking and servicing of plaintiffs' ships while they are in port," et cetera.

Now, we have here, so far as the defendants' case is concerned, that there was no picketing; that it was merely a protest. So in order to resolve the matter that we have at our hands, let us accept for the sake of argument that this was not intended as a picket line, it was merely intended as members of a union or group of unions to protest to other unions their thoughts concerning the vessel involved.

Now, do I make myself clear on that?

Mr. Mosser: Well, certainly I would say that this is a different case in that counsel for the defendants has not conceded as New York counsel frankly did, that one of the purposes was to tie up the ships.

The Court: Yes.

Mr. Mosser: I frankly fail to see the difference between what they call protest here and what is normally called picketing in a labor case.

What is picketing but carrying up and down a banner stating the position in an abbreviated form of the carrier for the benefit or knowledge or action of other people, usually other union people? That is what they were doing here, I submit. [110]

As I say, this is a point that comes up in almost every one of these labor cases. Mr. Carney, all the

way through the Court of Appeals in the Riviera case, was arguing that all the pickets did there was picket and if there was any action taken it was the action taken by the longshoremen and other people and the ship repair people who wouldn't go through their picket line. There was nothing wrong with these pickets, it was all with the other people.

Well, Judge Solomon and the Court of Appeals and the Supreme Court rejected—the Supreme Court didn't pass on that question—but it was rejected all the way through. I think it is just a fact of labor life that the Court could almost judicially notice that labor unions will normally respect a line established by the members of other unions walking up and down with banners, whether they say "Protest" or whether they say "Unfair," or whether they say "Strike."

The Court: No. I won't accept that as judicial knowledge. I asked this one witness if he had any reason to believe why work stoppage and work of this vessel by the servicing groups that were required ordinarily to service her, load her, had quit, and he said he had no reason to know. I will accept his statement as being his own view.

Mr. Mosser: I think, though, that on further questioning by your Honor he was asked, "Well, don't you think this had some influence?" and he said, "Yes, it probably did have some [111] influence in the decision of these workers not to"—

The Court: But I will not take judicial knowledge of it. I can take my own experiences in view just the same as the jury. We tell a jury in deciding

any question to take into view your ordinary daily experiences. But not judicial knowledge.

Mr. Mosser: I see the distinction and I think, perhaps, your Honor is correct in that.

I think the basic fact is that we have the fact that this picketing or boycott or protest or whatever you want to call it, did have the effect of tying up the ship. The coincidence of time, the reason reported by the stevedoring company that its men would not work because there was a line there, the attempt to get a tug and pilot who just wouldn't show up for the job—I think all of that tends to establish that it did have the effect of tying up the ship. The amount of damages and—I am not saying such as the Court would necessarily award damages on, but that isn't the purpose of this hearing. I think we made out a *prima facie* case that there was a substantial and continuing and quite possibly irreparable damage here as a result of the tying up of the vessel.

Now, I just want to cite one old case. I don't know whether your Honor is familiar with it. There haven't been too many recent cases on unfair restraints of trade [112] outside of the Sherman Act because——

The Court: Are you talking about common law?

Mr. Mosser: Common law. I just picked one old case out that was fairly close on the facts. That is *Elder vs. Whiteside* in the Federal Reporter, Volume 72, Page 724. That was a situation—the reason I picked it out, it is very close factually in a way. The charge was a conspiracy to prevent the loading

or unloading of a vessel except by certain labor that was acceptable to the people. Some of the defenses were that—there was no offense unless there was an interference with international or foreign commerce because of the antitrust laws of those days; that there was no actual damage shown to the ship and, therefore, no jurisdiction in the Federal Court. Since there was a crime there couldn't be a civil cause of action.

But the Court discussed at some length the common law conspiracy principle. The fact that you don't even have to prove necessarily overt acts as long as you prove the conspiracy and intent. Here I think we proved overt acts.

Finally he says:

“It is not necessary in this case to decide whether within the meaning of that statute the antitrust laws, the acts, and combinations against which the injunction is aimed would have been in restraint of trade or commerce among the several [113] states. This case was not based on that act. The questions now before the Court have been determined without reference to the above act and upon general principles that control the exercise of jurisdiction by courts of equity at the conclusion. Preliminary injunction must issue.”

Even in the antitrust cases today I think it is common for the Court to look to what was an unfair restraint of trade at common law to decide whether there is a violation of the Sherman Act which prohibits unlawful restraints of trade.

So, I think the proven International conspiracy

participated in to the extent of the meetings of union chiefs in discussions here, making available to their men messages such as this: "A message to all waterfront workers" or stirring them up to action, the actual furnishing by a member of the Marine Cooks and Stewards' Union to the other members of these protest banners, the picketing or protesting itself, the fact that it is organized to the extent of having 12:00 o'clock to 6:00 shifts, and things of that kind, show that it is a concerted action and, I think, even counsel has admitted that there is a concerted nationwide, worldwide action here.

The Court: What was your volume of the Federal—

Mr. Mosser: That was 72 Fed. [114]

The Court: Thank you. I have the other.

Mr. Mosser: Now, I think as far as the substantive law, whether Norris-LaGuardia deprives the Court of jurisdiction, as I hastily read Judge Bryan's opinion I would say that it is adverse to my position. I think it is adverse to the decisions rendered by Judge Boldt and Judge Solomon.

He also decides that if there is a boycott it is a violation of the Taft-Hartley—or, actually, I am not sure he decided that. He says: "If you are contending it is under Taft-Hartley then you have to go to the Board." He didn't read the Benz case, the Riviera case in the Supreme Court as controlling—

The Court: As you interpret it.

Mr. Mosser: As I interpret it—or as controlling

on the Norris-LaGuardia question. In the Tacoma case I think it is fair to say that Judge Boldt did largely accept the position that it was controlling. I didn't mention before that that Tacoma decision is on the Ninth Circuit and has been before that Court at issue and argued for some months now without a decision.

So I readily concede that there is a difficult question to decide here. I think Judge Bryan was under pressure when he decided it and probably even more pressure than Judge Boldt who considered the matter for over a week end from Saturday on and did not render his decision until [115] Monday. Judge Solomon in his first decision, as I recall, took some two weeks before granting the injunction. An additional period of about a week before granting his second injunction, and the third one was granted, I think, the same day that the show cause order was returned.

But he considered at some length this question of whether our labor laws were intended to apply in the foreign situation.

Judge Boldt said—I am quoting from his opinion now——

“In my judgment interference in the United States port with the lawful performance of a lawful contract of a foreign vessel and crew of a friendly foreign power is conduct which amounts to an unlawful interference with international commerce and with the obligations of the nation under international law and the comity of nations. The point of our case is that because we have international obli-

gations involved here of paramount importance to the welfare and security of the nation, particularly, at this critical time in world history, the interference with wholly lawful activities of the commerce of a friendly foreign power are unlawful and, therefore, regardless of how well founded or grounded the reasons for employing that unlawful conduct, the [116] Court has the power and duty to restrain it.

There is a treaty of friendship in navigation between the United States and Liberia which provides that the vessels of each shall have the free access to the ports and territorial waters and harbors of the other."

That is cited in Judge Bryan's opinion.

The Court: I am acquainted with it.

Mr. Mosser: The reason that we have argued that the Benz decision is controlling in the Norris-LaGuardia case is that we conceive them both to be fundamentally designed to promote collective bargaining in American labor relations. They both have—if you read the declaration of purpose of the two acts, they are very similar. They recite the inability of the men to bargain for themselves; the need to promote collective bargaining, virtually identical. When they get to defining labor dispute their definitions are identical except for one word. The Taft-Hartley Act has "terms, tenure and conditions of employment"; the Norris-LaGuardia Act has just "terms and conditions of employment" in their definition that run about a paragraph long. That is the only difference between the two.

Now, if the Supreme Court found that the purpose and the language of the Taft-Hartley Act was not a specific intent of Congress to cover these foreign employment [117] situations—and that is what the unions are talking about—if they are talking about labor at all it is, “What will be the situation of employment aboard this foreign vessel?” Then if it didn’t decide in that case that there was any congressional intent, where do you find it in the Norris-LaGuardia Act? Regardless of how the Court feels on the economics of this matter, we readily concede that there are competitive disadvantages of American ships with these foreign ships; though, frankly, if the unions are talking about raising wage scales, the Japanese ships, the English ships, the Italian ships, are the ones that have far lower scales than the Liberian vessel we are talking about which involves a great wage scale.

The Court: Yes. I read in the newspaper today there are two Japanese vessels in port, the Kokyo Maru and the——

Mr. Mosser: We regularly have those vessels calling. Each nation has its own peculiarities. The Greeks, largely because of the inflation and a high cost of living in that country, have wage scales at home that are fairly high worldwide and their shipping—seamen’s wages rates reflect that, being the third highest behind the United States and Canada in the world. The Japanese have very low wage scales.

The Court: I don’t like to interrupt your argument, I don’t think that it is up to this Court to de-

termine what vessels—and I am sure that Jason, when he sailed in search [118] of the golden fleece, wasn't troubled with it. But it isn't for this Court to determine what Greece will pay or provide by its legislature or administrative acts a seaman aboard one of its vessels shall receive.

Now, as I view this problem before us, and as I view the problem of the complaint of the defendants, there is a subterfuge that American vessels, in order to escape and to be relieved of taxation of the United States and to be—I won't say "relieved," I will say—benefited by the union contracts concerning the seamen and the officers aboard those vessels, that this subterfuge has been carried out to the point where they are registering under foreign flags, they are setting up beyond the veil corporations in foreign countries whose main interest really lies in the United States.

Now, the testimony before this Court is that this vessel is about two years of age. She was constructed in Japan. There is a blank in the testimony of who purchased her from the shipbuilder. The testimony of the master and the first officer was that they had been aboard about two months. The record is entirely devoid of any American or United States ownership or interest in this vessel.

The testimony before the Court is that she is owned by a corporation of Panama. There is no testimony or any evidence as to the ownership of that corporation. [119]

The next point is that she is registered under the flag and in the country of Liberia. Registry means nothing.

The next point of interest is that her operators who, apparently, hold the interest of operating this vessel, are a corporation of London. The testimony further is that that corporation is managed by Greeks—I mean, citizens of Greece.

The testimony is that every man aboard her is a citizen, a national of Greece, except one party in the vernacular, Sparks, who is an Englishman.

Now, where in the record, so far as the plaintiffs' case is concerned, is there any ownership or direction of citizens of the United States?

Mr. Mosser: Well, certainly there is none. I think there is a distinction. I don't think this Court has to draw the line. I think on the one hand the case I told you about in the National Labor Relations Board where an American concern was really controlling the employment relations directly, not even keeping up a screen of separation, and was submitting to the Coast Guard and was employing United States citizens in its crew, clearly there that registry has no meaning and foreign incorporation of ownership has no meaning.

On the other hand, here we have a completely foreign situation which, I think, is way over on the other [120] side and where the foreign facts must be recognized.

Now, as I have said, if we are talking about wages and working conditions we have showed that there is a foreign standard here arrived at through collective bargaining and with unions involved that is a good wage scale for the country where the men come from. If we are talking about tax advantages,

where is that a labor dispute? Can a company in Oregon be picketed by other workers because they don't want it to locate a plant in Washington where there is a sales tax? Where does this enter in?

Sure, there are competitive advantages there, but if we believe in free trade at all isn't the use of the legislature and the democratic process and free competition on an economic plane sufficient and not the boycott or black list of somebody who happens to go somewhere where you don't like the tax policies? That isn't the purpose for which collective bargaining was designed.

Now, as I said, there may be a case in the middle and this New York case may have been it. But I don't think this is where you have a carefully preserved screen of foreign ownership with actual foreign corporations controlling the operation of the ship, even though ultimate stockholders may be American. There you run again into the problems which our Congress deals with. We have laws encouraging foreign investment by American citizens, actually giving [121] them tax advantages to put their money in foreign countries. Now, maybe this is wise and maybe it is unwise. Maybe it is wise from our national standpoint, at least, it benefits some groups to have low shipping rates. Maybe our wheat goes to the Orient because shipping rates are low and it wouldn't go to the Orient to compete with rice and other competitive products if the shipping rates were high. I don't blame these seamen. I know the problems of the one small tramp American company that operates out of Portland.

They are at a tremendous competitive disadvantage. But if we believe in free trade some of our people are always going to be at a competitive disadvantage with foreigners whose wages scales or other factors—maybe it is tax laws, maybe it is something else—give them a competitive advantage.

But that is a problem for Congress to deal with. It is an economic problem of national policy, not something that is the subject of collective bargaining and not something which is the subject of a valid labor dispute.

The Court: Would you care to give me your thoughts and suggestions as to what labor dispute exists between the unions who are attempting this process with either the management of the vessel involved or the seamen aboard her?

Mr. Mosser: Well, in the first place, our position, as I have explained, is that there is no labor dispute because of the foreign nature of the ownership of the crew, [122] vessel, registry, everything; that our labor laws defining labor disputes, namely, the Taft-Hartley Act and the Norris-LaGuardia Act, contain virtually the same definition and were not intended to control foreign situations, and the Supreme Court so held in the Benz case as to the Taft-Hartley Act.

Now, my second position would be that there has been no demands made here on this master, these owners, at all. They haven't tried to enter into any collective bargaining. There has been collective bargaining, Articles have been arrived at in accordance with the Greek standards that are perfectly satis-

factory and sensible to Greek citizens. I don't see where there is any legitimate labor dispute here.

The Court: Thank you very much. Mr. Carney.

Mr. Carney: If it please the Court, I think I will argue from here, your Honor, because I have my things spread out quite far.

The Court: You may. I see you have many papers there.

Mr. Carney: I would like to follow up for a moment the observations and summary that the Court made just a moment or two ago when you pointed out with respect to this ship being constructed just a couple of months ago and it being constructed in Japan and it being purchased by this corporation, or some corporation, and it being put in trade and commerce and there being a blank in the testimony in this case with respect to the ownership of the vessel and with respect to [123] the ownership of the corporation which is operating this vessel.

Now, in considering that I think that the Court was quite correct when he observed that the thing that this protest is about is what the Court called a subterfuge; that there are shipowners who are flying flags on their vessels using the flags as a subterfuge in order to gain some economic advantage and their greatest economic advantage that they are gaining has to do with their wages that they are paying and the working conditions on their ship and the expense of those.

The Court: I think I used the word "tax." And

that was ill-advised because that has nothing to do with the matter.

Mr. Carney: We didn't bring it in the case and it isn't in the case.

The Court: I think I probably used that in connection with some cases that I read that that was another advantage that people would have. It probably is an advantage but whether or not these seamen are interested in that advantage—let's forget about it.

Mr. Carney: Fine. But they are primarily interested with respect to the labor problem because to them it has two things: job opportunity; and, No. 2, the wages scales for doing the same work in the same trade, such as carrying cargoes of grain from Portland to the Orient and the other [124] ports throughout the world.

Now, with that thought in mind I think our first inquiry should be this: The plaintiff, and particularly the shipowner plaintiff, has come into this court and asked for equitable relief or asked for an injunction. But they are silent on the question that the Court has pointed out may well be crucial in this case.

It would seem to me that the burden of proof of those matters would be upon the person who has the knowledge of it. We have a presumption that when a person has information within their own knowledge and fails to produce it that it is to be presumed that if it were produced it would be against them.

Now, that isn't the exact wording of presumption, but I think——

The Court: That is the statutory construction.

Mr. Carney: Now, we asked their local agent who they have here, International Shipping Company, we asked their captain who was on the stand, we asked the captain of the vessel about it, and none of them knew who owned the company and neither do we. Indeed, in every case, your Honor, that I have run onto—and I have been through a few of them—we can never find out, apparently, or it is very difficult to find out who the owner of the vessel is and who actually is hiding behind the veil of the corporate existence in [125] Panama. It is a difficult thing to find out.

I think Mr. Mosser will remember that in the Riviera case we didn't find it out until a week or two later. Then he had a telegram, or something, from someone in London who said, "Tell him who the owner was." In that case it was a Panamanian corporation. So I don't think that the burden should be put upon the defendants, the unions in this case, to show who owns this. The plaintiff corporation, when they come into court and ask the extraordinary remedy of a court of equity, should provide that. I think it is their burden and I think that they have failed to meet it. Now, I think that was the first point I wanted to make with the Court.

Now, the second thing is that we have all studied or, at least, had a chance to read Justice Bryan's opinion which he dictated in New York, and I think that we find——

The Court: But he was dealing with such a different problem than we have.

Mr. Carney: I think the problem—

The Court: Plaintiffs here are twelve Liberian corporations and three Panamanian. The defendants are the NMU and SIU, both International Unions, representing substantially all unlicensed seamen employed on American flag vessels.

Mr. Carney: I don't see, your Honor, wherein it differs. Here we have the Liberian flagship as plaintiff or shipowner.

The Court: Well, now, are you willing to concede for [126] the sake of the record that the defendants served and before the Court in their respective capacities either as officers or as members of the union represent and stand in the position of all American unlicensed seamen employed on American flag vessels?

Mr. Carney: For the purpose of this hearing, we are willing to do that, your Honor.

The Court: All right. Fine.

Mr. Carney: I meant to say I am willing to do that in this hearing. I even believe that Mr. Coleman's testimony bore that out when he spoke with respect to his own union. He couldn't speak for all the other unions.

The Court: Well, you can have your own construction about it. I had a different one. But I accept your stipulation. I thought he had many reservations on it in his testimony.

Mr. Carney: Well, I think, your Honor, that the reservations were with respect to the word

“picket” as distinguished from the word “protest.” That was the way I thought.

The Court: I don’t want to make an issue about it, Mr. Carney. I am pleased to have your stipulation. Now we understand.

Mr. Carney: Now, I think that a reading on Page 23 of Judge Bryan’s opinion appears, at least to me, that he does not—although there is a great deal said in the opinion [127] with respect to American shipping interests owning these vessels—that after he spoke of the definition of a labor dispute as defined in the Norris-LaGuardia Act and after, on Page 21, he said the term “labor dispute” has been broadly construed by the Court and called our attention to the leading cases on the matter, on Page 23 he states, beginning in the second sentence—he speaks in the first sentence as to whether or not the course of the union is wise, and he says that is entirely up to them as long as their activities concern terms or conditions of employment or the maintenance of such terms and conditions or the association or representation of persons in negotiating, fixing, maintaining, or seeking to arrange terms and conditions of employment, the case involved or grows out of a labor dispute. The courts are prohibited from interfering with such peaceful activities in the absence of fraud or violence.

Now, the particular thing—

The Court: May I just as a matter of inquiry at this point ask: What opportunity did the owners of the vessel involved have to meet any demands made by the American union?

Mr. Carney: They did not have any, your Honor. But as we know in a labor dispute situation there can be a labor dispute whether or not they are seeking to get employment or employment relationship with that particular employer.

In other words, there are a number of cases where [128] an employer is carrying on his business with substandard conditions.

The Court: Yes.

Mr. Carney: Whether or not the union is trying to get those jobs doesn't make any difference. The Courts have held that there is a labor dispute between that employer and union people engaged in the same trade or industry and that those union people would have a right to publish their dispute with the employer.

The Court: Well, of course, you have pointed out that you had no dispute, this was just a protest. What dispute under the state of the record did the participants either conducting or authorizing the carrying of these banners on the dock have?

Mr. Carney: The dispute is that there is a Liberian flag operator who we don't know who owns the ship. He is here in Portland taking up a cargo of grain for carriage to another port which is usually the work that has been carried on by American ships but which American ships cannot compete and get the charter at this time because of the foreign competition.

The Court: What about the two Japanese vessels in port today?

Mr. Carney: The situation of the Japanese ves-

sels, your Honor, comes back to what you said yourself with respect to [129] subterfuge. There has always been Japanese vessels which are Japanese flags, Japanese-owned and Japanese-manned, which carry cargoes to Japan, primarily, but also to other ports in the world.

The Court: That is right.

Mr. Carney: And they are, so to speak, bona fide foreign flags as distinguished from runaway foreign flags.

The Court: All right. Now, then, we have gotten down to the point that if this is a bona fide foreign ship you have no complaint.

Mr. Carney: If it is a bona fide foreign ship, that's true. If it is a bona fide foreign ship from Liberia we have no complaint.

The Court: Oh, no. If I were lucky enough I could own a small cruiser here on the Columbia and I could register at Grays Harbor. Does that make the owner of the vessel a resident of the State of Washington?

Mr. Carney: No, I don't imagine it would make him a resident of the state.

The Court: I think the flag that she carries is unimportant.

Mr. Carney: It is to one extent, your Honor.

The Court: The important part is who are the owners and the operators and whether or not they are trying to draw a subterfuge to evade the working conditions established by the [130] union with American flags.

Mr. Carney: If that be the issue, and it may well be——

The Court: A Japanese ship, if she wished and her owners wished, could certainly display the flag of Liberia and still not change her citizenship.

Mr. Carney: That's true. Then it would still be owned by a Japanese corporation or whatever corporate body they would have. But here when we come before the Court the owners of the vessel are secret and silent about who they are and whether they are American or not, I think that the presumption is against them. I think the burden is upon them and I think they haven't met it.

The Court: Well, I see your point.

Mr. Carney: And we made that point, your Honor.

I think there is another point upon which we ought to talk, and at first blush it will appear to the Court that this point may prove too much, and that is with respect to free speech. There is a line of cases that have held that labor unions in carrying on picketing and other such similar——

The Court: Well, you know, Mr. Carney, I have been through that mill before.

Mr. Carney: I know you have. But I want to apply it to this case, your Honor.

In any case where a union or anyone else claims free speech the Court, of course, will cast that aside if it [131] is found that their conduct is unlawful or has a wrongful purpose.

Now, I submit in this case that they have not shown any unlawful purpose; that they haven't

shown any wrongful conduct. The only thing that they have spoken of, the only thing that they have spoken of at all, has been restraint of trade and common law restraint of trade, not even statutory restraint of trade such as in the Sherman Act. I submit to the Court that the case that they cited you in the early Federal decision is prior to the enactment of the Clayton Act.

The Court: I recognized that.

Mr. Carney: I think that the conduct carried on by a labor union under the provisions of the Clayton Act is permissible conduct. In other words, if they are to seek an injunction in this court they must ask the Court to enjoin wrongful conduct. And I submit to the Court that they have not displayed any wrongful conduct as it is known in the law.

In the Benz case which he is relying upon, Judge Solomon found that there was wrongful conduct and he found that the wrongful conduct wasn't simply in the picketing of the ship, but he found it was in the purpose of the picketing. And the purpose of the picketing as found by Judge Solomon was that the union was attempting to make the employer, the shipowner, rehire a crew which went on strike when they shouldn't have. Now, that was the wrongful purpose which [132] gave basis to the damages and to the injunction in that case. But there is no such thing here.

The Court: May I ask you this? Just as a matter of advice, we have to use a purism, a pure situation. A Japanese vessel owned by Japanese citizens

flying the flag of Japan or any other registry carrying officers and crew under Articles signed with the nationality under the laws of the nationality of the ship, would you have any right to complain about working conditions, wages?

Mr. Carney: I missed the first part of what you said. Are you saying a Japanese ship with a flag of some other country?

The Court: I used the word "Japanese." Or, I could use the word "English" or any other.

Mr. Carney: But with a different flag than its own nationality?

The Court: Right.

Mr. Carney: I think, your Honor, the mere difference in the flag alone doesn't make any difference.

The Court: All right. Then we are even on that.

Mr. Carney: I did want to say a little bit further that we do—and although the evidence isn't clear in this case about it—some of the—the Liberian country, for example, has no inspection of the vessels and those type of regulations which make it easier to operate. But I think by and large [133] for the purpose of this case we can agree—

The Court: Let's carry on a little further. You have a vessel that is owned by Liberians and she is registered in Liberia and carries the Liberian flag and she is manned by officers and crew assigned under Articles of the law of Liberia, would you have any right to make a protest against her if she was in this port?

Mr. Carney: I think this, your Honor: I think

the answer is found in the definition of a labor dispute in the Norris-LaGuardia Act as relied upon by Judge Bryan, that whether or not you would have a dispute or protest with the vessel would depend if that vessel was coming into and going to engage in the trade and commerce which would be the same trade and commerce that the American sailors had been previously engaged in. If they were going to come in and compete in that commerce I think that the people engaged in that commerce would have a right to try to uphold their conditions in that trade and commerce. Now, do I make myself clear?

The Court: Yes, I understand your international thought about it.

Mr. Carney: In other words, the flag of one color or another I don't think makes a big difference. The big difference is that there is a certain amount of trade. There is only going to be a certain amount of cargo moved in the [134] world. There are a certain number of seamen going to do that job.

The American seamen have been in that trade and are in that trade. They have established wage rates and working conditions in that trade.

Now, by some of these ship organizations organizing in other countries and using other countries' flags have avoided being under the collective bargaining agreement enjoyed by the American sailors. When those vessels come into that trade the American sailors would then have a dispute with them arising out of the conditions in the industry which

they are trying to protect. Now, that is what we contend.

The Court: Well, I can well understand the Unions' desire to set international policies, but it would seem to me that all things being bona fide that each country should operate under treaties with our Government and if there is to be any changes it should be with the Congress. I am willing to go along on the basis of your thought that the ownership of this vessel and the hiring of her crew, her officers and her crew, was in subterfuge and in violation of what the owners were subjected to the contracts of the unions involved. I will leave it on that basis and I accept your argument that there is possibly a blank in the plaintiffs' case as to the true ownership of the vessel involved. I will accept your [135] argument on that basis. But I cannot see how this Court can possibly be engaged in a dispute of the policies of one nation and of this nation as to its seafaring men.

Mr. Carney: I submit, your Honor, they are not involved in such a dispute.

The Court: Well, you said that it was up to the American seamen to raise their standards throughout the world. If I misunderstood——

Mr. Carney: Not throughout the world, your Honor; throughout the trade in which they are engaged in this port or in any other American port.

The Court: Were there any members of these unions that would have been a possible candidate as a seaman or officer aboard this ship when its Articles were signed in Rotterdam?

Mr. Carney: Not when their Articles were signed in Rotterdam on this particular ship. That's true, they weren't there. But the thing is, your Honor, we have got to understand that this ship is a tramp ship. When they sign Articles they sign Articles for two years or so and that vessel will go from place to place and take what charters they can find and what charters their company arranges for them.

The Court: By your same token, when she comes to the Port of Portland stevedores would refuse to load her because of a protest of seamen engaged in similar activities with members of the crew. When she got to Hong Kong, Hong Kong [136] could do the same. Where would she ever load?

Mr. Carney: Well, let's answer one thing at a time, your Honor. As far as this case is concerned I don't believe there is any evidence with respect to any connection between these unions and the Longshoremen's Union. They made a Longshoremen's Union a party, your Honor, and they dropped them.

The Court: Of course, you understand that that is one of the problems that this Court has to decide. Now, was it because of the change of the moon that ships service personnel refused to work her?

Mr. Carney: Well, I wouldn't think so, your Honor.

The Court: All right. Was it a change of the tide? Now, you can't ignore the fact that there have to be some correlations in American labor. When one faction of American labor takes a posi-

tion it is pretty well followed that other factions employing a servicing agent will respect that.

Now, that is what this Court has got to decide: What was the causation of the fact that this ship which has been here two days and has not been worked in this port by any servicing agent?

Mr. Carney: Your Honor, I think the burden of proof on that is on the plaintiff. They sued the Longshoremen's Union. They didn't serve them or, if they did, they dropped them from the complaint. Our testimony is and the evidence is undisputed that there was no relationship between the [137] defendant unions and the Longshoremen's Union. The Longshoremen's Union is not affiliated with them, they are not a member of their local Maritime group; they are a different union.

If the Court knows some of the history of that union—and they do not always work harmoniously with the other Maritime unions, as a matter of fact, they have a number of jurisdictional quarrels——

The Court: I don't have any doubt about that. I know their problems, their interrelation problems. What we are dealing with primarily is whether or not in New York the defendants were frank to admit that it was picketing. Here in an identical situation the defendants deny that it is picketing, deny that they were asserting any labor dispute; that they were merely protesting.

Now, how can you find a labor dispute when you deny that there is one?

Mr. Carney: We haven't denied there was a labor dispute, your Honor. We have not done that.

The witnesses said that they were not picketing. We spoke of this earlier, I think, that what they wanted to make clear and what their testimony showed was that it wasn't picketing in the sense that they were on strike and it wasn't picketing in the sense that when they have ordinary picketing they tell another union not to go through the picket line.

Now, that was what they were making clear to the [138] Court by using the word "protest" instead of the word "picketing." They were walking up and down in front of the ship with a banner, that is for sure. That's undisputed. That is the evidence in the case. The evidence was stipulated to as to what the banner said. The testimony was that as to what the quarrel is that these unions have with the so-called runaway flags with respect to their breaking down their conditions and depriving them of their jobs, that testimony is in the case and that is what the basis of their labor dispute is.

The Court: I think you pinpointed to me very well your position. Anything further?

Mr. Mosser: I think I will only cover one point, your Honor, because I think the rest of it has been brought out in your own questions and show an understanding of it. We would certainly disagree with this argument that we have the burden of coming into court and proving not only the ownership of the vessel by corporation but also of all the stockholders of that corporation.

Now, if that information is necessary we can probably get it. But they have never requested that we get it. They have never alleged that it is an

American-controlled and dominated corporation. It seems to me that if they are going to try and justify their picketing on the basis that this is a subterfuge and, in effect, some sort of a semilegal [139] attempt to avoid the tax and labor policies of this country that is being conducted by this plaintiff and the owners, that they have the burden of proving that.

Now, they adopted this resolution for this boycott, as the paper will show, way back the end of October, the first of November. They have been working up to this thing ever since. They have the shipping guide. This vessel came to Longview, Washington, before it came here. It's been in the river for awhile. They have made no effort to find out anything to support their theory that this is an American-controlled ship. Neither have they done anything to support their labor dispute argument, made any demands for negotiations concerning wages, hours, or working conditions, terms and conditions of employment aboard this ship. It seems to me they are throwing up screens to try and justify a nationwide boycott, when actually, if what they are concerned about is competition, as the evidence in this case has showed, the competition is far more extreme from some of the principal Maritime nations such as Japan, Great Britain, and Norway, than it is from, at least, this particular ship manned with Greeks, so far as the evidence shows, managed and operated by Greeks, governed by Greek collective agreement conditions and in all respects satisfactory to the Greek citizens in accordance with the standards that they are accustomed to.

The Court: I will enter a decision at 9:45 in the morning.

(At 4:30 o'clock P.M. Court adjourned.)

(At 9:45 o'clock A.M. December 4, 1958, the Court rendered his opinion as follows:)

The Court: As the record shows, this Court completed taking of testimony and the receipt of evidence and that it heard the statements of counsel in connection with the matter of Fianza CIA Nav. S.A., a corporation, whom I understand to be a Panama corporation, and the other plaintiff, Frachten Treuhand, G.m.b.h., which I understand to be a corporation of Germany, against various unions, officials of the unions and members of the unions. There has been read into the record the parties who had been served at the time of the hearing, and plaintiff elected to go forward against those defendants who had been served. So the Court can only deal with reference to those defendants whom the record shows were served and counsel for the defendants having read in the record that they represented those particular people.

The Court was unresolved at the close of the hearing yesterday afternoon, late in the afternoon, and determined that it should have the advantage of the evening time to review the oral opinion which was entered by Judge Bryan in New York, I believe, last Saturday.

During the course of the trial there was considerable discussion among counsel and the Court as to the exact status of the plaintiffs as either owners,

operators or charterers of the vessel involved, being the—I believe she is the [141] Motorship Capetan Yemelos which is presently in this port, Portland, docked at a private dock. And she has been unserved and unserved by any servicing maritime agency since the time there appeared in the vicinity of the dock certain members of the unions which have been served and are parties to this proceeding, who carried banners to the effect that they were protesting the practice which they claimed that this vessel and her owners and charterers were engaged in in attempting to develop policies of undermining and lowering the standard of wages, working conditions, of American seamen.

Great stress has been placed by the defendants upon the decision of Judge Bryan of New York of last Saturday, wherein he held that a labor dispute existed and that his court did not have jurisdiction to enter injunctive relief *pendente lite*. So this Court questioned counsel and tried to be attentive to the evidence produced as to determining whether or not the factual situation presented here in Portland was the same as the situation in New York.

Now, I read from Page 10 of the transcript of Judge Bryan's oral opinion wherein it states:

“The defendants”—being unions and members of the unions—“described the ‘flags of convenience’ or ‘flags of necessity’ which these ships fly as ‘runaway flags’ and assert they are a device by which the American interests who control the [142] plaintiff Corporations avert the necessity of entering into American collective bargaining agreements with the

crew of such vessels or the payment of American seamen's wages."

Now, that was the premise upon which Judge Bryan proceeded. There were multiple plaintiffs and multiple defendants in that matter before the Judge and it was all predicated, and as the evidence in this case shows that there was an international movement among international labor unions, if you will understand the meaning that I am placing on that, representing seamen throughout the world and, particularly, American seamen.

And that movement was advertised, as the evidence shows in this case, through the media of information, the trade journals of the union and the union members, that a four-day protest would be staged against this practice of vessels being and carrying what seems to be in the vernacular runaway flags; in other words, meaning that by subterfuge the true ownership and the true nationality of a vessel was disguised by having her registered and carrying the flag of some foreign country. And there seems to have been three countries that had been picked out that appear to be utilized by these so-called runaway flagships being under the Panamanian flag, Costa Rica, I believe, and, as we are dealing here, primarily, Liberia, or the Liberian flag. [143]

Now, I have reached the conclusion that in determining the relationship of these parties that what flag any given bottom carriers is not of importance. The question is: Who are the true owners, the true operators and the true charterers of any given ves-

sel upon any given voyage? If it should develop that the owners, operators, or charterers are engaged in some sort of a conspiracy or some sort of activity that tends to relieve them of their true obligation of dealing collectively with bargaining agents of American seamen, then the American seaman has had a wrong committed against him. If, on the other hand, the true ownership and the true operator or the true charterer of any given vessel on any given voyage is purely foreign, is not in a position, in any event, to deal collectively with any bargaining agent representing any American seaman, the American seamen have no complaint; they are not in the market.

As this Court pointed out yesterday, there were—at least, according to the Shipping News—two Japanese vessels being worked by the servicing agencies within the port without any difficulty. So the question was and it now resolves to determine whether or not the owner of this vessel involved is in truth and fact American or United States ownership which has devised a plan which would tend to defeat or to relieve them of their duty to bargain collectively with any given bargaining agent of any group of [144] American seamen. Secondly: Is there a labor dispute either within the meaning of the Norris-LaGuardia Act or Taft-Hartley Act or Oregon's Little Norris-LaGuardia Act? If there is a labor dispute, then the jurisdiction of this Court with reference to injunctive matters and labor disputes is greatly restricted and this Court acknowledged that.

If, on the other hand, there is no labor dispute, then this Court is obliged to determine whether or not either under common law or under State law or, perhaps, Federal law whether or not these individuals who have placed themselves in the vicinity of the dock where the ship is berthed and attempted to have been loaded have violated some wrong against the owners, the operators and the charterers of the vessel involved.

Now, the first plaintiff indicated is a corporation of Panama. There is no direct showing in the evidence as to who the stockholders of this corporation are, neither on behalf of plaintiff nor on behalf of the defendants who were required to show cause.

Now, this Court has found, it takes judicial knowledge of the laws of Panama, and is bound to take the presumption or the inference, at least, that all business transactions had are bona fide and in due course.

The second plaintiff in the case is a German corporation who is the charterer of the vessel on this given [145] voyage. Evidence shows that she came here under ballast and that she was to be stowed with a cargo of barley to be delivered to a port in Germany. There seems to be no quarrel, no contention made by the defendants that any of the stockholders of the German corporation are of American nationality. The evidence shows that the operator of the vessel is a corporation of England, or, at least, an organization of some type in England with its office in London. And the testimony of the mate and the master of the vessel indicate

that the principals of that corporation or organization, whatever it be, are of Greek nationality. The crew of this vessel on this voyage are of Greek nationality with the exception of one, the radio operator, who is an Englishman.

The crew and the officers some two months ago signed Articles of the voyage at Rotterdam. And the only testimony or evidence before the Court is that those Articles were in conformity with the laws of Greece and that the wage scale and the conditions, working conditions, of the officers and the crew were in conformity with the wages and working conditions established by the labor unions of Greece.

Now, there is no showing as to who the stockholders of this English organization or corporation are other than the oral testimony of these two officers that they were of Greek nationality. One other thing: The testimony shows that this vessel's keel was laid and she was launched and built [146] in Japan some two years ago. The record is absolutely devoid of any evidence on behalf of any of the parties that she was ever owned by American interests, she was ever chartered by American interests, or that she was ever operated by American interests with the one exception of the evidence of the port husband agent here in Portland who was hired, as he said, by wire, I think, or telegraph, some instructions from London.

So I am content to find on the record before me that this vessel is a foreign vessel; that she is owned, she is controlled, that she is operated by an entire foreign interest; that no American nor na-

tional of the United States has any interest in this voyage other than the sellers of the cargo.

Therefore, unlike the New York case, this Court is content to hold that this vessel is not a runaway flag; that she is operating when she came to this port under treaty approved by Congress; that there was no competition, and that there was no market for any American seaman as a member of her crew.

Now comes the question as to whether or not there is a labor dispute. Now, in the New York case the defendants were content to say that they were picketing and the Judge in his opinion in several instances refers to picketing or protest. In this case the defendants insist that there is no picketing; that this is just merely a protest. [147]

Somehow they heard about it and after members of the union had talked about it they asked for volunteers and some volunteers—the volunteers, some of whom are defendants, properly served and before this Court appeared at the dock and in the vicinity where the vessel is berthed, and simultaneous or practically so with the appearance of these protesters carried banners that they protested the ship and the working conditions and wages paid officers and crew, all servicing agents, marine servicing agents in the Port of Portland refused to have anything to do with this vessel.

Since this occurred she has been moored at the dock, she is unable to move, she is unable to be loaded. For all practical purposes she is a dead ship.

Now, the defendants in their evidence claim that they have no labor dispute with any of the crew

members nor with the owners of the vessel. There have been no demands made, there has been nothing sought by way of collective bargaining; they just simply appeared and ipso facto the vessel for reasons they do not know why became a dead ship.

I cannot find from any of the evidence in the case that there was any active conspiracy between any of the defendants before this Court to prevent the loading of this vessel; yet, on the other hand, this Court does find that members of the union appeared wearing banners in protest and that other members of other unions ceased and desisted in [148] performing their ordinary duties in connection with servicing and working the vessel in the port. So I find from the evidence that there is no labor dispute existing between any of the unions and its members before this Court.

I further find that this Court has jurisdiction of the parties on diversity. I further find that under the allegations and testimony it is true the defendants say that this protest is only going to last four days and I believe it's today or tomorrow which would be the fourth day. But as Judge Bryan pointed out in his case, it may be four days or it may be longer. The evidence in this case shows that since the time this vessel has not been worked she is suffering damages at the rate of \$1500 a day, plus being assessed by reason of the fact that under a tariff adopted by one of the port facilities by reason of her failure to be worked or to be loaded she is being assessed \$100 an hour for not removing herself from the dock.

So I find that this Court has jurisdiction under the \$10,000 jurisdictional limitation. So it necessarily follows this Court having jurisdiction of the parties and its jurisdictional amount having been met that there is no labor dispute between these parties; that the action of the party defendants before this Court has prevented and has been an interference on the contractual rights of this vessel, her charterer, her owners and her operators with [149] other parties. And while I have sympathy for the position of the defendants that if the owners of this vessel had in some wise at one time been obliged to deal with these American seamen under our standards and then sought by a subterfuge to evade that, this Court would be one of the first to grant those American seamen such relief as it could, but this Court has found otherwise. And the only one that has been harmed in this transaction by reason of the activity of the defendants served and before this Court has been those defendants themselves.

I am constrained to say that, perhaps, they picked the wrong vessel in this case. So it will follow that a temporary injunction as prayed for in Plaintiffs' Prayer No. 2 as to the defendants before this Court and any parties acting in concert in connection with or under their direction shall be enjoined from committing the activities complained of from and after 12:00 Meridian today.

Counsel for plaintiffs may submit findings and appropriate order.

[At 10:15 a.m. this matter was adjourned.]

(At 3:10 p.m. December 4, 1958, the following matters were heard in the Court's chambers, there being present the Court, the Court Reporter, Mr. Mosser, Mr. Shoemaker and Mr. Carney:)

Mr. Carney: We went over these findings and language of the injunction and we are pretty much in agreement as to the form of that language. Of course, as the Court knows, the defendants in this case do not have to take exceptions to the findings——

The Court: I understand that.

Mr. Carney: ——to reserve any right of appeal, if we care to take one.

The Court: Right.

Mr. Carney: In order to complete the record to conform to the findings there are two or three facts which we are willing to stipulate to which we would like to present to the Court now.

The Court: You may read them in the record.

Mr. Carney: I think that what they are is that we are willing to stipulate to certain of the findings as being true.

Mr. Mosser: That's correct.

Mr. Carney: Mr. Mosser, do you want to tell us what those are?

Mr. Mosser: That would include the original Finding 15 [151] which has been stricken out and a special Finding 15 which has been inserted on a fly-leaf. It concerns which of the unions were actually doing or having on their behalf done the patrolling at the vessel and which were not.

The Court: Yes.

Mr. Mosser: There is no direct testimony on some of these facts in the record, but we are both willing to stipulate to them.

The Court: Well, with the exception of each one of the witnesses who were called——

Mr. Mosser: Some of it is supported in the record and some of it is by stipulation.

The Court: All right.

Mr. Mosser: We are also willing to stipulate to Finding No. 19 which concerns the fact that the plaintiffs own, operate, charter other vessels that call at the Port of Portland and other ports within the jurisdiction of this Court, and to Finding 20, which is that the defendant would continue to patrol and protest against this M/V Capetan Yemelos and other vessels of the plaintiff unless restrained and enjoined from doing so.

The Court: Of course, I am not quarreling with your stipulation. I am willing to accept any stipulation of fact that Counsel will make. But I am wondering what the facts under the Findings 19 have to do with this dispute. [152]

Mr. Mosser: Counsel for the defendants has also agreed that in view of this stipulation it would be proper for an injunction to enjoin the defendants not merely from picketing the Yemelos but also from picketing other vessels—I may advise the Court that this is similar to what was done by Judge Boldt on the stipulation of counsel in Tacoma. It is partly designed to insure that the case will not become moot when this one particular vessel

on this one particular voyage departs. Because there is a continuing dispute here between the defendants and the plaintiffs on any future voyages.

The Court: Well, would it be Counsel's thought that this restraining order would be effective, assuming another vessel of plaintiff moved in the port tomorrow? Would this restraining order be against any activity along the nature as described in this case against that vessel?

Mr. Carney: If it were owned by the same corporation who is plaintiff in this case and if it were flying——

Mr. Mosser: And the same type of vessel; in other words, a foreign vessel with a foreign crew sailing under foreign Articles in international commerce.

The Court: Of course, the only reason that I could find any justification in connection with this order that was made was on the basis that she was a foreign bottom as distinguished from owners trying to evade some particular action.

Now, if I understand Counsel correctly in connection [153] with Findings 19 and 20, that it would be on the same basis and the same state of facts in this case——

Mr. Mosser: That is correct, your Honor. I don't think there is anything inconsistent. You have already found that these owners and charterers are foreign. In the form of the injunction itself as well as in the conclusion, if we are entitled to the injunction, we specify that they must be similar vessels of foreign operation.

The Court: Yes. "Owned, chartered, calling at this port, defendants will continue to patrol and protest and take similar action or other harassing action against other vessels of plaintiff of a similar nature." All right. I will go with it.

Just as a matter of interest, I understand there are vessels in the Port of Vancouver.

Mr. Carney: There are about five vessels in Portland, all of which had this picketing and only—this vessel is the only one that came to court about it. The picketing is continuing on the others.

The Court: Well, what about this Vancouver matter?

Mr. Mosser: I think there is one over there.

Mr. Carney: Yes. There is one in Vancouver.

Mr. Mosser: There are others in Seattle and Tacoma.

The Court: The Washington paper is trying to get ahold of me.

Mr. Carney: Of course, this Court has jurisdiction over the vessel in Vancouver. [154]

The Court: Pardon?

Mr. Carney: This court has jurisdiction over the vessel in Vancouver. At least, there is joint jurisdiction.

The Court: Within so many miles.

Mr. Mosser: One other thing that I would like to put into the record in line with your Honor's ruling, and that is that a \$500 bond be posted under Rule 65. The plaintiffs are tendering into the registry of the Court the check of the International Shipping Company payable to the U.S. District

Clerk in that amount for the payment of such costs and damages as may be incurred or suffered——

The Court: Yes. I will go with that.

Mr. Mosser: ——by any of the defendants herein who are found to be wrongfully enjoined or restrained.

The Court: I don't suppose it is certified.

Mr. Mosser: No, it isn't, your Honor.

The Court: Well, the Clerk will be bothered about it until it is cashed.

Let the record show that I will accept it as the bond.

Mr. Carney: We have no objection to it.

(At 3:20 p.m. this matter was concluded.)

[Endorsed]: Filed April 13, 1959.

[Endorsed]: No. 16447. United States Court of Appeals for the Ninth Circuit. Leroy Hein, Stuart J. Masters, Lawrence Cox, Vincente Otiz, Ray H. Robinson, J. Sloan, Art Coleman, and Lew Cornelius, Appellants, vs. Fianza Cia, NA. S.A., a corporation and Frachten Treuhand GNBH, a corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: April 20, 1959.

Docketed: April 28, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 16447

LeROY HEIN, et al., Appellants,

vs.

FIANZA CIA, NAV. S. A., a corporation, et al.,
Appellees.

STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY, AND
DESIGNATION OF CONTENTS OF REC-
ORD TO BE PRINTED

Come now LeRoy Hein and the other appellants herein, and for their statement of points upon which they intend to rely herein, said appellants adopt the statement of points set forth in the typewritten record forwarded from the United States District Court for the District of Oregon.

Said appellants designate for printing all of the record on appeal, excluding the original exhibits.

Dated April 27, 1959.

TANNER & CARNEY,
/s/ TOLBERT H. McCARROLL,
/s/ RICHARD R. CARNEY,
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Acknowledgment of Service Attached.

[Endorsed]: Filed April 28, 1959. Paul P.
O'Brien, Clerk.

